

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Certification of	)	MB 04-_____
Digital Transmission Content Protection	)	
("DTCP") for Digital Broadcast	)	
Content Protection	)	

**CERTIFICATION OF  
DIGITAL TRANSMISSION LICENSING ADMINISTRATOR LLC  
FOR APPROVAL OF DTCP AS AN  
AUTHORIZED OUTPUT PROTECTION TECHNOLOGY**

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## **Introduction and Background**

The Digital Transmission Licensing Administrator, LLC (“DTLA”), pursuant to Public Notice DA 04-145 issued by the Commission on January 23, 2004, and the regulations set forth at 47 C.F.R. § 73.9008, hereby submits its Certification concerning the use of the Digital Transmission Content Protection technology (“DTCP,” also known as “the 5C technology”) for protection of “Unscreened” and “Marked” digital terrestrial broadcast content.

In 1996 and 1997, representatives of the motion picture, consumer electronics, information technology and cable and satellite industries met in the Digital Transmission Discussion Group (“DTDG”) of the Copy Protection Technical Working Group (“CPTWG”), to define in a Call for Proposals the technical parameters for a system to protect digital transmissions between devices connected over a home network. After the conclusion of more than a year of effort by the DTDG, Hitachi, Intel, Matsushita, Sony and Toshiba -- the “5C Companies” -- jointly produced the Digital Transmission Content Protection Specification, providing a simple and inexpensive method affording a high degree of protection for copyrighted commercial entertainment content transmitted over high-speed bi-directional digital interfaces.

DTCP defines a cryptographic protocol for protecting audio/video entertainment content from unauthorized copying, interception and tampering as it traverses high performance digital interfaces. Only commercial entertainment content delivered to a source device via another approved copy protection system (including, but not limited to, conditional access systems used for digital cable and satellite video transmissions, and, pursuant to the Commission’s adoption of regulations in this proceeding, Unscreened and Marked Content) are to be protected by the DTCP technology.

DTCP relies on strong cryptographic technologies to provide flexible and robust copy protection. The cryptographic techniques used in these technologies have evolved over the past 20 years to serve critical military, governmental, and commercial applications, have been thoroughly evaluated by legitimate cryptographic experts and hackers, and have proven their ability to withstand attack. The cryptographic stability of the system is derived from the proven strength of the underlying technologies, rather than merely how well a certain algorithm can be kept secret.

DTCP enables its encryption and authentication techniques to be implemented without imposing heavy burdens on consumer electronics devices. Manufacturers of typical devices and applications can implement DTCP at a commercially feasible design complexity or manufacturing or product cost. Notably, DTCP also imposes little burden upon companies that wish to use DTCP to protect transmissions of their audiovisual content. DTLA licenses DTCP on reasonable, non-discriminatory terms. DTLA views the role of DTCP as an “appurtenant” technology that enables new “primary” markets for networked consumer electronics and information technology products, and new content distribution media and services for the benefit of consumers. DTLA therefore geared the fees for DTCP toward cost recovery, so as to make the necessary licensing administration and cryptographic key management efforts self-sustaining over the long-term.

DTCP further was designed to coexist with current copy protection technologies, such as CSS and conditional access systems for digital television transmission, and to be compatible with other content encryption and watermarking technologies developed in the future. DTCP also can “hand off” protected content to other digital output protection technologies, such as HDCP for the DVI and HDMI interfaces, and to recording protection technologies such as D-VHS for

Digital VHS tape recorders; CPRM for DVD-R, DVD-RW and DVD-RAM recorders as well as SCard flash memory cards. Recent requests to approve additional technologies currently are under review. DTLA remains willing to work with any technology proponent to render content protected with DTCP compatible with other digital output and recording protection technologies, and to authorize the interchange of protected content between DTCP and such other technologies.

DTCP initially was designed for the IEEE 1394 transport, in accordance with the terms of the CPTWG DTDG Call for Proposals in 1996. DTCP since has been mapped to protect other digital transports as well, and can be mapped to protect any high-speed bi-directional transport. DTCP has been mapped for use over Internet Protocol (“DTCP-IP”) for wired and wireless transports, including Ethernet and 802.11 transports, the MOST interface for mobile environments, and for the USB transport. Work has been completed on mapping of DTCP for Bluetooth and Op-iLink.

#### **I. General Operation of the DTCP Technology, Including its Scope of Redistribution**

The operation of DTCP is set forth fully in the Specifications for use of DTCP over the various transports to which DTCP has been mapped. Informational versions of these Specifications for DTCP (which exclude only those aspects that reflect confidential and trade secret information) are available from the DTLA website, <http://www.dtcp.com>.

In overview, the DTCP system addresses four fundamental layers of content protection:

- **Authentication and Key Exchange**
- **Content Encryption**
- **Copy Control Information**
- **System Renewability**

#### A. Authentication and Key Exchange (AKE)

Before sharing protected information, a connected device must first verify that another connected device is “authentic,” that is, that such device indicates its implementation of and compliance with DTCP. The authentication process occurs when devices are connected and/or activated along a digital network, and typically completes within a timeframe that is imperceptible to the user. In an effort to balance the protection requirements of the film and recording industries with the real-world requirements of PC and CE users, the Specification includes two authentication levels: Full Authentication and Restricted Authentication.

- **Full Authentication** can be used with all content protected by the system, but must be used for copy-never content. For DTCP-IP implementations, full authentication is mandatory for all content protected by the system.
- **Restricted Authentication** enables the protection of copy-one-generation and no-more-copies content. If a device does not handle copy-never content, for non-IP implementations, the device may support only restricted authentication. Copying devices, including consumer electronics devices such as digital videocassette recorders, DVD recording devices, and D-VHS recorders and devices communicating with them, may employ this kind of authentication and key exchange.

Table 1 illustrates the authentication method performed, based on the source and sink device authentication capabilities:

Source	Sink	Authentication Performed
Full / Restricted	Full / Restricted	Full
Full / Restricted	Restricted	Restricted
Restricted	Full / Restricted	Restricted
Restricted	Restricted	Restricted

**Table 1. Authentication Method Matrix**

Both Full and Restricted Authentication involve the calculation of three types of keys:

- an **authentication key**, established during the authentication process, used to protect the exchange keys
- an **exchange key**, used to set up and protect content streams
- a **content key**, used to encrypt the content being exchanged

## **B. Content Encryption**

Following authentication, content is transmitted from a source device to a DTCP-compliant sink along a secure authenticated channel in encrypted form. The content cipher, that is, the algorithm used to encrypt the digital content itself, must be robust enough to protect the content yet efficient enough to implement in either hardware or software in PCs and CE devices. To ensure interoperability, all devices must support the specific cipher specified as the baseline cipher. The channel cipher subsystem can also support additional optional ciphers, the use of which is negotiated during authentication. All ciphers are used in the converted cipher block chaining mode. Converted cipher block chaining provides greater security than ordinary cipher block chaining.

The DTCP Specifications for IEEE 1394, USB and MOST require Hitachi's M6 cipher with a 56 bit key length as the baseline cipher. The M6 cipher is a common-key block cipher algorithm based on permutation-substitution. This algorithm is closely related to the encryption algorithms currently used in Japanese digital satellite broadcasting systems.

DTCP-IP requires use of the Advanced Encryption Standard with a 128 bit key length (AES-128) as the baseline cipher. AES is a publicly tested symmetric block cipher algorithm tested by the National Institute of Standards and Technology and adopted as Federal Information Processing Standard (FIPS) 197.

AES-128 also is defined as an optional cipher that may be used in addition to the baseline M6 cipher for IEEE 1394, USB and MOST.

### **C. Copy Control Information**

Content owners may specify whether and to what extent their content may be duplicated and redistributed, subject to the Encoding Rules described below. The content protection system must therefore support transmission of encrypted data between devices, using **Copy Control Information (“CCI”)**. If source and sink devices have conflicting capabilities, they must follow the most restrictive CCI method(s) available, which is determined by the source device. Two methods are defined by the specification:

- **Embedded CCI** is carried as part of the content stream. Many content formats including MPEG have fields allocated for carrying the CCI associated with the stream. The integrity of embedded CCI is ensured since tampering with the content stream results in erroneous decryption of the content. Only devices capable of processing the content itself can process this form of CCI. As relevant to this proceeding:
  - No authentication or encryption is required to protect a digital terrestrial broadcast transmission that has not been marked with a Broadcast Flag and, so, programming received via such a transmission can be copied and redistributed freely.
  - Content also may be marked “Encryption Plus Nonassertion” (“EPN”), which applies DTCP protection, so as to protect against unauthorized redistribution outside of compliant devices along the authenticated



network, yet permits the content to be freely copied in a protected form.

Content marked with the Broadcast Flag is to be set to EPN.

With respect to content other than digital terrestrial television:

- Content that is never to be copied (*e.g.*, content from prerecorded media with a Copy Generation Management System (“CGMS”) value of 11, such as a DVD Movie) can only be exchanged between devices that have successfully completed full authentication.
- Content that can be copied one-generation (*e.g.*, content with a CGMS value of 10, such as a pay TV program) can be exchanged between devices using either full or restricted authentication.
- For content marked no-more-copies, future exchanges are marked to indicate that a single-generation copy has already been made. This content can be exchanged between devices using either full or restricted authentication.
- The EPN setting can be applied to content delivered via conditional access systems.
- Copy Never content other than from prerecorded media may be retained (such as on a PVR) for no less than 90 minutes.
- Copies of content (other than content marked copy never) stored on a non-removable storage medium (*e.g.*, a PVR) can be “moved” to a removable storage medium (*e.g.*, a DVD-R disc or D-VHS cassette tape).
- The **Encryption Mode Indicator (“EMI”)** provides an easily-accessible yet cryptographically-linked indicator of CCI. By locating the EMI in an easy-to-

access location, devices can immediately determine CCI without needing to extract embedded CCI (e.g., in the MPEG transport stream). This ability is critical for bitstream recording devices (such as a digital VCR) that do not recognize and cannot decode specific content formats. When multiple mechanisms are available, the most restrictive should be used. The EMI indicates the mode of encryption applied to a stream.

Source devices will choose the right encryption mode based on embedded CCI and set the EMI accordingly. Sink devices will choose the right decryption mode by examining the EMI.

If the EMI bits are tampered with, the encryption and decryption modes will not match, resulting in erroneous decryption of the content.

EMI and Embedded CCI are to be encoded by or at the direction of the content owner in accordance with Encoding Rules set forth in the Content Participant Agreement, and in an “IP Statement” that facilitates the use of DTCP by non-Content Participants. While EMI and Embedded CCI enable several settings under the Encoding Rules (including copy-freely, copy-never, copy one generation, or no-more-copies) according to limitations that are similar to those set forth in the Cable-CE “Plug and Play” Agreement, as relevant to this proceeding the Encoding Rules for DTCP require that Marked Content shall be encoded as EPN.

#### **D. System Renewability/Revocation**

Devices that support full authentication can receive and process System Renewability Messages (“SRMs”). These SRMs are generated by the DTLA and delivered via content and new devices. System renewability ensures the long term integrity of the system and provides the capability for revoking unauthorized devices. The revocation process invalidates the Device

Certificate associated with a particular device when the device ID incorporated in such certificate is included in the certificate revocation list in the SRM, and renders such device unable to exchange content with another device via DTCP.<sup>1</sup>

SRMs can be delivered to DTCP-enabled sink devices from several sources, including:

- Prerecorded content source devices such as DVD players should be able to update an SRM from prerecorded content media (such as a DVD disc). In addition, prerecorded content should carry a system renewability message current as of the time the content is mastered. Such devices should also be able to update an SRM from another compliant device with a newer SRM.
- Devices such as digital set-top boxes (“STBs”) serving as digital cable receivers or DBS digital broadcast satellite receivers are a real-time delivery source of copyrighted content. They should be able to update an SRM from a content stream or from another compliant device with a newer SRM.
- Devices such as digital televisions are a receiver of copyrighted content. These devices should be able to update an SRM from another compliant device with a newer SRM.

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<sup>1</sup> Given the draconian nature of revocation, DTLA has specified the circumstances under which revocation may be imposed, namely, where (a) a Device Key and corresponding Device Certificate have been cloned such that the same key and certificate are found in more than one device or product; (b) a Device Key and/or Device Certificate have been lost, stolen, intercepted, misdirected or made public or disclosed; or (c) revocation is required by court order or other government authority. *See* Adopter Agreement § 4.2. Revocation cannot be ordered for any other noncompliance with or breach of an Adopter Agreement. *Id.* Moreover, revocation for reasons described in clauses (a) and (b) can only occur with the consent of the affected Adopter or pursuant to a determination in an independent arbitration, in accordance with detailed processes with procedural safeguards set forth in the Adopter Agreement, Procedural Appendix § 14, and Content Participant Agreement § 6. Notwithstanding, as a further safeguard, DTLA designed its system such that a revocation that proved to be erroneous could be reversed by issuance of an updated SRM. DTLA notes that, to date, no revocations have been either requested or performed.

#### **E. Scope of Redistribution**

DTCP was designed to facilitate the distribution of protected content among a multitude of devices connected along home and personal networks. The scope of redistribution is limited by the DTCP Specification, the DTCP Compliance Rules and the transmission protocols over which DTCP is implemented. Under the current DTCP Specification, a single content source can distribute the same protected content to 34 DTCP-compliant devices. This enables, for example, the same television program to be enjoyed simultaneously on sophisticated home theater installations (including, for example, discrete audio and video processing modules and 7.1 speaker surround sound, each component of which counts as a distinct DTCP device), and on other PC or CE devices located, for example, in a separate bedroom or den, all connected to the same network. (Notwithstanding, numerous sources can simultaneously supply different content to a variety of devices on the same network).

Redistribution to the public via the Internet (*i.e.*, outside home and personal networks) is not facilitated by the DTCP technology. DTLA will not approve any output or recording technology that enables unauthorized electronic redistribution outside home and personal networks.

DTCP enhances localization of content and minimizes unauthorized redistribution also by taking advantage of certain limitations on redistribution imposed by the network protocols and physical characteristics of the underlying transport. For example, the IEEE 1394 and USB interfaces were designed to permit short-range connections between devices. The MOST interface supports digital interconnection of audiovisual devices within an automobile or similarly contained mobile environment. Equivalently, DTCP-IP takes advantage of certain attributes of the Internet Protocol, such as by setting the “Time To Live” field of the IP packet

header so as to limit redistribution through a maximum of three routers before discarding the protected packets, and WEP and WPA encryption that restricts the exchange of data over wireless IP transports to devices that share a user-specified password. In addition, pursuant to a Work Plan of September 2003, DTLA is working collaboratively with its Content Participants to investigate and implement additional means to further restrict the scope of IP-based communication to devices within a localized area. *See* [http://www.dtcp.com/data/Work\\_Plan\\_09092003.pdf](http://www.dtcp.com/data/Work_Plan_09092003.pdf).

## **II. Level of Protection Afforded by DTCP**

The DTCP technology and Compliance Rules establish a high level of protection designed to be effective to thwart or frustrate attempts to send DTCP-protected content to noncompliant devices, and to limit distribution of such protected content to DTCP-compliant devices within the home and personal network. The level of technical protection provided by DTCP is defined by the Compliance Rules and Robustness Rules applicable to all Adopters, as set forth in the Adopter Agreement. Recognizing that no technology can ensure complete immunity against dedicated hacking so as to “prevent” unauthorized redistribution, DTCP was designed to achieve and exceed the goal, as generally accepted by inter-industry consensus, of “keeping honest people honest,” at a level of robustness set forth in the DTCP Robustness Rules.

DTCP utilizes established and tested cryptographic methods that have been demonstrated over time to provide strong and effective security for protected content. More specifically, as noted above in section I.B., the M6 encryption cipher is similar to algorithms that for many years have been deployed broadly in Japan to protect audiovisual content delivered by satellite broadcasters. AES has been adopted as a U.S. government standard encryption algorithm after rigorous public testing and comment. DTLA is unaware of any successful attacks on either

encryption algorithm, and knowledge of these algorithms does not in and of itself enable circumvention. As described above in section I.D., where a Device Certificate and/or Device Key has been pirated or cloned into unauthorized devices, revocation can be employed so as to isolate such devices from other devices on home and personal networks and render such devices unable to exchange content with other devices using DTCP.

Protection for content owners further inheres in the ability, through contractual provisions, intellectual property rights and statutory remedies, to provide effective enforcement of the technical and robustness requirements as well as the encoding rules. The 5C Companies own intellectual property rights in DTCP, including patent rights covering aspects of encryption, elliptical curve cryptography and cipher block chaining, among other patented elements; copyright in the Specification; and trade secrets protected by contract and state law. Because DTCP relies on authentication and encryption, section 1201 of the Digital Millennium Copyright Act, 17 U.S.C. § 1201, provides additional legal enforcement against unauthorized circumvention of such technological measures as well as against the manufacture, distribution and sale of devices that circumvent.

The Content Participant Agreement grants third party beneficiary rights to Content Participants so as to permit them to enforce against an Adopter, through injunctive and other equitable relief, the obligations set forth in the Compliance Rules and Robustness Rules of the Adopter Agreement. (Conversely, the Adopter Agreement grants Adopters a right to enforce against a Content Participant, through injunctive and other equitable relief, the obligations set forth in the Encoding Rules of the Content Participant Agreement).

The DTCP license provisions also require that content, once protected with DTCP, be protected thereafter using either DTCP or other effective technologies. Specifically, the DTCP

Compliance Rules permit content to be retransmitted using specified output technologies that perpetuate the protections signaled by the content owner via DTCP. Similarly, content protected with DTCP may be recorded, as permitted by the CCI, using technologies that will limit or prevent further recording in accordance with such CCI. The procedures applicable to the approval of such transmission and recording protection technologies will be discussed, *infra*, at Section III.C.

### **III. Licensing and Approval of DTCP by Manufacturers and Content Owners**

DTCP has been licensed by more than 75 companies, including manufacturers of television receivers, STBs and digital recorders; IT companies; cable system operators; semiconductor manufacturers; and component resellers.

DTCP is specified in the DFAST Technology License Agreement for Unidirectional Digital Cable Products as an authorized digital output protection technology applicable to any DFAST-licensed cable product having an IEEE 1394 output. *See* DFAST License, Exhibit B (Compliance Rules) ¶ 2.4.1.

DTCP is specified in the Nonexclusive POD-Host Interface License Agreement (“PHILA”) dated August 1, 2003 as an authorized digital output protection technology. Under the PHILA, a licensed product may pass “Controlled Content “ to any digital output protected by DTCP; in other words, a product licensed under PHILA may use DTCP over IEEE 1394 or any of the other wired and wireless transports supported by DTCP.. *See* PHILA, Exhibit C (Compliance Rules) ¶ 2.4.1., available online at [http://www.opencable.com/downloads/PHILA\\_080103.pdf](http://www.opencable.com/downloads/PHILA_080103.pdf) (last visited February 29, 2004).

Numerous digital television products currently on the market, including high definition digital television sets, D-VHS and DVD-R, -RAM and -RW recorders and cable STBs, utilize

DTCP for protection of digital video outputs. Information on representative 5C-enabled DTV, STB, DVR and semiconductor products from non-5C Companies are attached at Appendix 1.

Two major motion picture studios, Sony Pictures Entertainment and Warner Bros., have signed Content Participant Agreements granting them an affirmative right to encode or have encoded DTCP for their Commercial Entertainment Content.

MPAA member companies expressed support in this proceeding for the use of DTCP to protect content marked with the Broadcast Flag. *See* Comments of MPAA, *et al.*, at 26 (December 6, 2002). MPAA companies subsequently submitted to the Commission *ex parte* comments suggesting that technologies approved for use in either the DFAST License Agreement or the PHILA should also be certified as approved technologies for protection of Unscreened and Marked Content, and these comments specifically included reference to and approval of the use of DTCP for such purposes. *See* MPAA *Ex Parte* letters and attachments thereto, dated October 28, 2003 and October 31, 2003.

Pursuant to an “IP Statement” first issued by DTLA in July 2001, DTLA has represented that it will not enforce its intellectual property rights in DTCP against content owners that wish to use and require use of DTCP without a license, so long as they encode or direct to be encoded their content with DTCP in accordance with the applicable Encoding Rules. *See* IP Statement, <http://www.dtcp.com/data/IPStatement07102001.pdf> Thus it is unnecessary for any content owner to enter into a Content Participant Agreement in order to be able to use DTCP to protect its commercial entertainment content. DTLA anticipates that a majority of content owners will avail themselves of the IP Statement rather than to incur the expense and responsibilities appurtenant to a Content Participant Agreement with DTLA.



DTCP has been authorized for use as a protection method for digital output of recorded content protected with DVHS, CPPM and CPRM. In addition, the DVD Copy Control Association recently approved the use of DTCP for protection of motion picture content output from CSS-encrypted DVD video discs over the MOST digital interface.

#### **IV. Licensing Terms and Conditions**

The Commission has requested in its regulations an explanation of the licensing terms and conditions under which a proposed technology will be offered and, in accordance with those requirements, DTLA is pleased to offer in this section a detailed summary of the basic terms under which DTCP is and will be made available, and to attach its license terms to this petition.<sup>2</sup>

DTCP is licensed by the Digital Transmission Licensing Administrator, LLC.<sup>3</sup> DTLA makes available two basic types of licenses to the DTCP technology:

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<sup>2</sup> Notwithstanding, as a matter of policy, DTLA respectfully submits that the Commission's interest in such terms and conditions should be narrowly drawn, and should be focused on creating a marketplace where many technologies are able to be certified and to compete for adoption and use, and the marketplace decides which technologies in fact get used. DTLA thus believes that the role of the Commission in this proceeding should only be to establish a set of criteria directly related to redistribution control that describe a "floor" or guaranteed minimum level of protection that every technology must achieve, and streamlined procedures that can facilitate the speedy approval of numerous technologies that are capable of applying redistribution control to broadcast content. With such minimum content protection criteria and procedures in place, technology proponents that wish to make their technologies available can obtain quick certification, and the marketplace can choose among such technologies based upon a host of factors, such as effectiveness, efficiency, cost and burden – including considerations of the costs and burdens imposed by the terms and conditions of their respective license agreements. DTLA believes that it is competition in the market place, rather than government control over license terms, that will result in greater economic and social benefits for content owners, consumers and manufacturers, and will explain these points more fully in its Reply Comments in this proceeding.

<sup>3</sup> Administration services for licenses to DTCP are provided pursuant to contract with an independent entity, License Management International, LLC. This arrangement also insulates potentially competitively-sensitive information, such as the number of keys and certificates ordered by a particular Adopter, from disclosure to any of the 5C Companies.

(continued...)

- **Adopter Agreement**, for the manufacture of Licensed Products and Licensed Components that implement the DTCP Specification<sup>4</sup>
- **Content Participant Agreement**, for encoding of Commercial Entertainment Content with DTCP<sup>5</sup>

These agreements follow an approach, commonly employed in licenses for digital video content protection technology, that narrowly defines the scope of “necessary” patent claims being licensed for the purpose of implementing the technical specification of that particular protection technology,<sup>6</sup> and requires in return that the licensee agree not to assert any of its “necessary” patent claims, within that scope, against any other licensee (here, the Adopters that implement the DTCP technology and the Content Participants that invoke its use). The owners

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<sup>4</sup> DTLA also makes available agreements that permit the resale and distribution of Licensed Components: a “Reseller Agreement,” for the resale of Licensed Components to fellow Adopters, and a “System Operator Agreement” for the secure download by a cable or satellite system operator of a monolithic software module, including certain Licensed Components, to an authorized set top box on consumer premises.

<sup>5</sup> As noted, DTLA also has represented in an IP Statement that it will not assert its intellectual property rights in DTCP against any content owner that encodes or directs to be encoded DTCP consistent with the DTCP Encoding Rules.

<sup>6</sup> “Necessary Claims” in the DTCP agreements, in brief, are limited to those patent claims owned or controlled by the 5C Companies that must be infringed to make a product that complies with the protocols and cryptographic algorithms, packet formats and data structures disclosed in the DTCP Specification. The license grant further extends to all copyright and trade secret rights owned or controlled by the 5C Companies embodied in the Specification for DTCP. See Adopter Agreement §§ 1.22 and 5.2; Content Participant Agreement, definition of “Necessary Claims” at 7, and § 2.1.

of many technologies – and their scores of licensees – have deemed this approach an appropriate one for digital video copy protection and related technologies.<sup>7</sup>

DTLA elected to use this predominant model for content protection technology licenses because it is sensible and pro-competitive. Manufacturers compete based on product features, not content protection technologies. Content protection technologies are simply necessary infrastructure in the digital market-place, which can benefit consumers by providing incentives for release of digital content, but content protection technologies are not themselves digital product offerings for which consumers will pay higher prices. DTLA is not therefore charging the type of commercial royalty rates that the 5C Companies typically would charge for their intellectual property, but instead are offering DTCP with an eye to cost recovery. Thus, consumers and all licensees benefit from the lower costs enabled by the license model, including the reciprocal covenants. Nothing in the DTCP license prevents any Adopter or Content Participant from licensing its patents on whatever terms it wishes in connection with any technology developed by that licensee (including in a competing content protection technology), or has any other impact outside the scope of the “necessary claims” specifically associated with implementing DTCP; and, of course, nothing in this proceeding requires anyone to elect to use DTCP from among the technologies to be approved by the Commission.<sup>8</sup>

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<sup>7</sup> For example, licenses for CSS (for DVD video discs), CPPM (for prerecorded DVD audio discs), CPRM (for certain recordable DVD discs and for content stored on SD memory cards), HDCP (for the DVI and HDMI interfaces) and CPS for Blu-Ray RE (for recordable high capacity digital video discs), and the HDMI format, all utilize this same necessary claims/reciprocal covenants licensing model.

<sup>8</sup> DTLA is aware of a recent filing with the Commission in this proceeding expressing disagreement with the use of such reciprocal covenants in technology licenses, so DTLA will address more fully the procompetitive aspects of its licensing model in due course. Notwithstanding, the benefits of this licensing model (including the benefits of lower licensing (continued...))

All agreements have been offered by DTLA to any potential Adopter (including Resellers and System Operators) or Content Participant on a nondiscriminatory basis. Similarly, DTLA has extended the IP Statement to all content owners on a nondiscriminatory basis. The Adopter Agreement has been made available by DTLA to any Adopter on a nondiscriminatory basis since first it was offered in 1998, and in revised versions dated October 1999 and July 2001. The current versions of the Content Participant Agreement and the IP Statement have been made available since July 2001. The Adopter Agreement, Content Participant Agreement and IP Statement have been and continue to be freely available to the public for download from the DTLA website at <http://www.dtcp.com>

Export regulations in force when DTLA initially offered for license DTCP permitted use of DTCP only for content that was delivered to a consumer in a protected encrypted or scrambled conditional access form, and did not permit use of DTCP for content delivered to a consumer in the clear (including unencrypted digital terrestrial broadcast television). Following the promulgation by the Commission of regulations in this proceeding, DTLA has amended its license agreements and the IP Statement so as to permit the encoding and use of DTCP with the EPN setting for content marked with the Broadcast Flag. Copies of the revised Adopter Agreement, Content Participant Agreement and IP Statement are attached hereto as Appendices 2, 3 and 4, respectively. Upon certification by the Commission of DTCP as an authorized digital output technology, DTLA will offer the revised Adopter Agreement and Content Participant Agreement on a nondiscriminatory basis to all current and potential Adopters and

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costs to consumers and licensees) would be substantially undermined if licensees could extract commercial rates for their licensed-back technologies, while the licensors of the primary systems did not. In any event, as a factual matter, DTLA is unaware of any actual prejudice from its adoption of this commonly-used licensing approach.

Content Participants, respectively, and will extend the revised IP Statement on a nondiscriminatory basis to all content owners.

**A. Compliance Rules, Including Robustness Rules**

The DTCP Adopter Agreement includes Compliance Rules, which incorporate the DTCP Robustness Rules.<sup>9</sup> The DTCP Compliance Rules set forth in Exhibit B to the Adopter Agreement consist of three parts: an Introduction applicable to all DTCP Licensed Products; Part 1, which sets forth the additional Compliance Rules specifically applicable to devices that have “Sink Functions,” *i.e.*, the function of receiving content protected with DTCP; and, Part 2, which sets forth the additional Compliance Rules specifically applicable to devices that have “Source Functions,” *i.e.*, the function of transmitting content in protected form using DTCP. Devices that have both Sink and Source Functions must comply with all three parts of the Compliance Rules.

The DTCP Robustness Rules are set forth in Exhibit C to the Adopter Agreement. Exhibit C also includes at Exhibit C-1 a Robustness Checklist that restates many of the obligations of the Robustness Rules as a series of questions, for ease of use by engineers as an optional aid to Adopters in ensuring compliance with the Robustness Rules; the Checklist does not impose any additional or independent obligations on Adopters.

The DTCP Compliance Rules and Robustness Rules have served as a model for analogous rules for other protection technologies and systems, including certain Compliance Rules and Robustness Rules set forth in the DFAST License Agreement.

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<sup>9</sup> See Adopter Agreement § 1.6.

## **B. Change Provisions**

The DTCP Adopter Agreement permits limited changes to be made to the DTCP Specification in consultation with Adopters and, as required by the Content Participant Agreement, in consultation also with Content Participants. The relevant provisions are set forth at section 3.3 of the Adopter Agreement and at section 3.7 of the Content Participant Agreement. The essential elements of these provisions are summarized below:

1. DTLA will not make material changes to the Specification for DTCP, provided that DTLA may make limited changes to enable DTCP to be used over additional interfaces.
2. DTLA reserves the right to correct omissions or errors to the Specification, or to make changes that would clarify, but not materially amend, alter or expand the Specification.
3. Content Participants possess specified “change management” rights with respect to certain proposed amendments to the DTCP Specification and the terms of the DTCP Adopter and Content Participant Agreements. A Content Participant will receive advance notice of a DTLA Proposed Action, as defined in section 3.7 of the Content Participant Agreement, and will have 15 business days in which to file a written objection to such action setting forth specific reasons why such Content Participant believes the action will have a material and adverse effect on the integrity or security of DTCP, the operation of DTCP with respect to protection of content from unauthorized transmission, interception or copying, or the rights of Content Participants with respect to DTCP. Any objections are to be resolved by arbitration before an independent arbitrator or panel from the American Arbitration Association. Certain proposed actions, such as the mapping of DTCP to particular interfaces used on a home and personal network, have been deemed by the parties in advance to not be material or adverse.

4. Adopters participate in a Content Protection Implementers Forum (“CPIF”), and are provided with 30 days’ advance notice and opportunity to comment on proposed changes to the Specification and to the Compliance Rules. From time to time, DTLA may convene meetings of the CPIF to discuss proposed changes and permit open discussion among CPIF members and DTLA.

5. Adopters are required to implement any mandatory changes to the Specification within 18 months after notice that a proposed change has been adopted as final by DTLA.

6. Changes to the Compliance Rules become effective within 12 months of adoption.

7. Voluntary changes that add new features not previously addressed in the Specification (*e.g.*, the adoption of a new Specification adapting DTCP to an additional interface) or the Compliance Rules (*e.g.*, permitting a “move” of Copy One Generation content stored on a PVR to a different recordable medium) become effective upon adoption.

8. Changes to procedures for ordering DTCP certificates and cryptographic keys may be made upon 30 days’ prior written notice.

9. Changes to the Administration Fee or Per Certificate Fee for Adopters may be made upon 30 days’ prior notice; such changes to the Administration Fee will become effective beginning on the next Annual Payment Date for that Adopter. Notwithstanding, DTLA has committed in section 2.1 of the Adopter Agreement, that, where device key or per Adopter costs decrease, DTLA will take commercially reasonable efforts to reduce its fees. Similarly, under section 4.1 of the Content Participant Agreement, changes to the Administration Fee for Content

Participants may be made annually upon 30 days' prior notice, with any increases in fees to be commensurate with any increase in DTLA's costs.<sup>10</sup>

**C. Procedures for Approving Downstream Transmission and Recording Methods**

DTLA created DTCP for the purpose of providing an interoperable platform for devices that transmit, receive and record protected digital content. With such interoperability in mind, DTLA provides in its licensing agreements for the use of digital output and recording protection technologies that may currently be identified by DTLA or may be approved by DTLA in the future.<sup>11</sup>

DTCP protects one transmission "link" in the chain of use and distribution in the home and personal network, and it is axiomatic that any chain is only as strong as its weakest link. Therefore, DTLA considers it essential that DTCP "hand off" content that has been protected with DTCP only to other technologies that provide protection at least as effective as DTCP. For that reason, the criteria used by DTLA to evaluate and approve downstream protection systems mirror the protective elements of the DTLA technology and license, particularly with respect to the provisions of Compliance Rules, Robustness Rules, and enforcement capabilities that are at least as stringent as those set forth in the DTCP license agreements.

The criteria by which DTLA evaluates requests for approval of digital transmission and recording protection methods are set forth in the document attached at Appendix 5. DTLA provides this document to any technology proprietor that requests approval of its technology by

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<sup>10</sup> DTLA has not increased its fees under either the Adopter Agreement, the first of which was executed in 1999, or the Content Participant Agreement, the first of which was executed in 2001.

<sup>11</sup> See Adopter Agreement, Exhibit B Part 1: Compliance Rules for Sink Functions, §§ 2.2.1 and 4.4. See also Content Participant Agreement § 3.7(a) and (b).



DTLA as an authorized digital output or digital recording protection technology. The proponent provides DTLA with non-confidential technical information concerning the operation of the technology, and the applicable licensing terms, sufficient to enable DTLA to evaluate whether the criteria have been satisfied. DTLA will accommodate requests by proponents to make presentations to DTLA, in person or telephonically, and may engage the proponent in follow-up correspondence so as to clarify the proposal or obtain additional information necessary for an informed decision.

A determination by DTLA to approve a particular transmission or recording protection technology is a “DTLA Proposed Action” that is subject to change management review by Content Participants. Pursuant to paragraph 3.7 of the Content Participant Agreement, Content Participants may file a written objection to such approval within 15 business days of notification by DTLA, based on specific evidence that such approval will have a material and adverse impact on the integrity or security of DTCP, the operation of DTCP with respect to protection of content from unauthorized transmission, interception or copying, or the rights of Content Participants with respect to DTCP. Any such objections are to be resolved by arbitration before an independent arbitrator or panel from the American Arbitration Association.

DTLA has received several requests for approval from proponents of other protection technologies for digital transmissions and recording. DTLA has approved HDCP as an authorized digital output protection technology. DTLA has approved as digital recording protection technologies D-VHS for the DVHS digital tape recorder, CPRM for certain DVD recorders as well as SDcard flash memory cards. Other recently-received requests currently are under consideration by DTLA. To date, DTLA has not refused a request for approval from any technology proponent.

#### **D. License Fees**

The DTLA agreements provide for payment of annual administration fees, and fees for generating device certificates. Content Participants pay an annual administration fee of \$18,000. Adopters have a choice of balancing a lower administration fee with a higher per certificate cost (which would result in lower costs for Adopters that use DTCP on a smaller scale) or a higher administration fee with a lower per certificate cost (which would result in lower costs for Adopters that use DTCP on a larger scale). The specific administrative fees and per certificate costs are set forth in the following table from the Procedural Appendix of the Adopter Agreement, Exhibit A:

<b>Category</b>	<b>Annual Administration Fee (US \$)</b>	<b>Per Certificate Fee</b>		
		<b>Restricted</b>	<b>Full</b>	<b>Restricted/Full</b>
Evaluation Fee	\$10,000	N/A	N/A	N/A
Adopter-Small	\$14,000	.06	.06	.07
Adopter-Large	\$18,000	.05	.05	.06
Shipping and Handling - \$200.00 / order				

**Table 2. Adopter Administrative Fees**

DTLA established these fees based on cost recovery, thereby to help ensure long-term funding for necessary licensing administration and cryptographic key generation facilities.<sup>12</sup>

As noted above, DTLA has stated that it would use commercially reasonable efforts to reduce administrative and per certificate fees to Adopters and would limit increases in administrative fees to Content Participants commensurate with any increases in expenses. The

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<sup>12</sup> DTLA does not impose administrative fees for either the Reseller Agreement or the System Operator Agreement, inasmuch as these entities require no resources from DTLA aside from the execution of the Agreement itself, and their activities do not alter the Licensed Component that is subject to the Compliance and Robustness Rules imposed upon the Adopter that provides such Licensed Component to the Reseller or System Operator.

above-referenced fees have been in place for Adopters since 1999, and have been in place for Content Participants since 2001, and have not been increased.

**V. DTCP Accommodates Consumer Use and Enjoyment of DTV Broadcast Content.**

DTCP as applied to Unscreened or Marked Content accommodates and does not interfere with consumer use and enjoyment of DTV broadcast content. As an initial observation, the Encoding Rules in the DTLA Content Participant Agreement and IP Statement do not permit DTCP to be applied to digital terrestrial broadcast content that is not Unscreened Content or Marked Content. Thus, consistent with the interests of the public and content owners, DTLA has ensured that DTCP will not restrict redistribution of any digital terrestrial broadcast content over which redistribution control has not been asserted via the broadcast flag.

Pursuant to the Content Participant Agreement and the IP Statement, Unscreened or Marked Content are to be encoded using DTCP with the EPN setting. DTCP permits both the transmission of EPN content across the home and personal network and multi-generational copying of EPN content; *provided* that DTCP-compliant devices must restrict distribution of EPN content to the home and personal network, and require that all copies of such content also be protected against unauthorized redistribution. Thus, the obligations imposed by DTCP are coextensive with the purpose of this proceeding to facilitate home and personal uses, while restricting unauthorized electronic redistribution outside of that home and personal network.

DTCP is available for use over a multitude of protocols and platforms, including IEEE 1394, wired or wireless Ethernet and 802.11. The availability of DTCP over a variety of interfaces provides flexibility, convenience and choice to consumers as to the methods and equipment to distribute their protected broadcast content along different home network topologies or hybrid wired and/or wireless topologies, and even to enjoy protected recordings in

mobile environments such as a car, SUV or boat. DTLA intends to continue its efforts to map DTCP to additional interfaces so as to meet the interests of the market, and so as to help ensure the long-term viability and value of consumer investments in digital television products and networking technologies.

DTCP similarly strives to promote interoperability with devices that use different transmission interfaces and protection technologies. Thus, for example, consumers who prefer to connect devices using interfaces that are not protected using DTCP, such as DVI and HDMI, will be able to transmit and display Marked Content that previously had been protected using DTCP.

Similarly, DTLA works cooperatively with the proprietors of recording protection technologies so as to enable consumers to record content protected with DTCP on a variety of recording platforms. Technologies approved to date include DVHS, DVD-R, -RAM and -RW. DTLA is open and willing to work with proprietors of other technologies so as to render their systems interoperable with DTCP.

DTCP does not interfere in any manner with the display or recording quality of content protected using EPN. The Content Participant Agreement and IP Statement specifically preclude the encoding in digital terrestrial broadcast content of a token to trigger image constraint of a high-definition analog output signal.

Finally, DTCP does not interfere in any manner with the ability of a consumer to play recorded content on any device capable of reading the recorded format from a disc or tape; thus, for example, DTCP does not interfere with a consumer's ability to play recorded Marked Content on a neighbor's home theater system, or to make additional protected recordings of such content for the normal circle of a family and its social acquaintances.

Thus, DTCP promotes the interests of consumers by enabling the free transmission and multiple recording of Marked Content within the home environment, and by limiting any constraints on such uses to those required by and consistent with the scope of protection required by the Commission's regulations.

### **Conclusion**

DTCP is a well-established, tested technology that provides effective protection against unauthorized redistribution of commercial audiovisual content, including digital terrestrial broadcast television. DTCP is used and approved by content owners for protecting all video content, and has been licensed for use by more than 75 companies. DTCP has been approved for use in cable set-top boxes pursuant to the DFAST license and the PHILA. DTCP is interoperable with other interface and recording technologies. Licenses are available to Adopters and Content Participants on a reasonable and nondiscriminatory basis, and any content owner may avail itself of the protections of DTCP for Unscreened and Marked Content without a license, pursuant to the IP Statement. Finally, DTCP promotes home networking and flexibility for consumers, without interfering with the use or enjoyment of digital terrestrial broadcast television content.

For these reasons, and for such additional reasons as the Commission may deem to be in the public interest, DTLA respectfully submits that DTCP merits certification by the

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Commission as an authorized digital output protection technology for Unscreened Content and Marked Content.

Respectfully submitted,

Michael B. Ayers  
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Digital Transmission Licensing Administrator, LLC  
michael.ayers@tais.toshiba.com

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Digital Transmission  
Licensing Administrator

**DIGITAL TRANSMISSION PROTECTION LICENSE AGREEMENT**  
**Evaluation License Convertible to Product License**

This DIGITAL TRANSMISSION PROTECTION LICENSE AGREEMENT, (“Agreement”) is effective as of the latest date set out on the signature page hereof (the “Effective Date”) by and between Digital Transmission Licensing Administrator, LLC, a Delaware limited liability company (“DTLA”) and the “Adopter” which is named immediately below:

Name of Adopter:	
Description of Adopter’s Business	
Name of Contact Person:	
Contact Person’s Address,  Phone Fax number E-mail Address:	
Location of Principal Office:	
Jurisdiction of Adopter’s Formation:	
Year of Formation:	
Number of Employees:	
Amount of Capital:	

**BACKGROUND**

- A. The Founders have developed a certain method for encryption, decryption, key exchange, authentication, and renewability for purposes of protecting certain digital content from unauthorized interception, retransmission and copying.
- B. The Founders have licensed the method to DTLA for purposes of further licensing the system and administering such licenses.
- C. Adopter wishes to receive a license, subject to the terms and conditions set forth in this Agreement for the purpose of developing and evaluating such method including, but not limited to, adherence to the Compliance Rules.

Therefore, DTLA and Adopter agree as follows:

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## AGREEMENT

### 1. DEFINITIONS.

In addition to terms defined elsewhere in this Agreement, the following terms shall have the following meanings. All definitions herein shall apply equally to their singular and plural forms, all pronouns shall apply without regard to gender, and all references to Sections and Exhibits shall be deemed to be references to Sections of, and Exhibits to, this Agreement unless the context shall otherwise require.

1.1 “**Activation**” means that the Adopter has executed the Activation Notice and has paid the fees referenced in Section 2.2, which are required to activate the Adopter’s manufacturing license.

1.2 “**Adopter**” means the entity named at the beginning of this Agreement and includes its Affiliates.

1.3 “**Adopter Agreement**” means this Agreement and any other Digital Transmission Protection License Agreement entered into by DTLA and any other adopter of DTCP.

1.4 “**Affiliate**” means with respect to any person or entity, any other person or entity directly or indirectly controlling or controlled by or under direct or indirect common control with such person or entity. “Control” means the possession of beneficial ownership of more than 50% of the stock or other similar interest entitled to vote for election of the Board of Directors or similar managing authority.

1.5 “**Commercial Entertainment Content**” is defined in the Compliance Rules.

1.6 “**Compliance Rules**” means both the requirements set out in Exhibit B and the Robustness Rules set out in Exhibit C, as such exhibits may be amended by DTLA from time to time pursuant to Section 3.2.

1.7 “**Compliant**” refers to a product which is in compliance with all applicable Compliance Rules.

1.8 “**Confidential Information**” means Proprietary Information that is either marked “confidential” or “proprietary” when disclosed in written form or indicated as “confidential” or “proprietary” when disclosed orally and confirmed in writing within thirty (30) days after such disclosure.

1.9 “**Content Participant**” means a company which has executed a Content Participant Agreement with DTLA, or with an entity authorized by DTLA to execute such agreements. DTLA will identify such companies periodically.

1.10 “**Content Participant Agreement**” means any Content Participant Agreement entered into by a provider of Commercial Entertainment Content and DTLA or any entity authorized by DTLA to execute a Content Participant Agreement.

1.11 “**Device Certificate**” means a cryptographically encoded value which may be provided by DTLA or its designee which authorizes a device to exchange certain Commercial Entertainment Content.

1.12 “**Device Keys**” means cryptographic values which may be provided by DTLA or its designee for use in devices, and include the “Private Device Key” and the “Public Device Key” and keys associated with Restricted Authentication, all identified in the Specification.

1.13 “**DTCP**” means that certain method for encryption, decryption, key exchange, authentication and renewability for purposes of protecting certain digital content from unauthorized interception and copying which method is described in the Specification.

1.14 “**DTCP Associates**” means entities which have executed an agreement relating to the handling and



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redistribution of Licensed Components and who are designated as DTCP Associates by DTLA. DTLA will identify such entities periodically.

1.15 **“Fellow Adopters”** means the Founders and any other entity which has executed an Adopter Agreement and delivered it to DTLA or its designee.

1.16 **“Founders”** means Hitachi, Ltd., Intel Corporation, Matsushita Electric Industrial Co., Ltd., Sony Corporation, and Toshiba Corporation.

1.17 **“Generator”** means DTLA or an entity that has been retained by DTLA to generate Device Certificates and Device Keys for use by Adopters.

1.18 **“Highly Confidential Information”** means Proprietary Information that is marked “Highly Confidential Information” when disclosed in written form or is otherwise designated as such hereunder.

1.19 **“Interface”** means the protocols (including cryptographic algorithms), packet formats, and data structures disclosed in the Specification.

1.20 **“Licensed Component”** means a product, such as an integrated circuit, circuit board, or software module, which is designed to be assembled into a Licensed Product and which embodies a portion of the Specification, but which does not completely satisfy the Compliance Rules.

1.20.1 **“Licensed Component (Schedule 1)”** means a Licensed Component which is in any way not Compliant, other than a Licensed Component (Schedule 2) or as otherwise specifically permitted hereunder.

1.20.2 **“Licensed Component (Schedule 2)”** means a Licensed Component which is not Compliant only to the extent that it outputs Decrypted DT Data (as defined in the Compliance Rules) in decompressed form which output is not compliant with Section 4, Part I of Exhibit B.

1.21 **“Licensed Product”** means a product, including a hardware device or software application, which:

1.21.1 Embodies the designs set out in the Specification,

1.21.2 Is Compliant, and

1.21.3 Is designed for the transmission and/or receipt of digital transmissions comprising Commercial Entertainment Content.

1.22 **“Necessary Claims”** means claims of a patent or patent application relating to the Interface that must be infringed in order to make a product that complies with the Interface, which are owned or controlled by DTLA, any Founder, Adopter or any Fellow Adopter, any Content Participant or any of their respective Affiliates. “Necessary Claims” do not include any claims relating to semiconductor manufacturing technology; claims relating to aspects of any technology, standard or product that is not itself part of the Specification (including, by way of example, CSS, MPEG, IEEE 1394 and analog copy protection systems) even though such technology, standard or product may otherwise be mentioned or required by the Specification or Compliance Rules; claims with regard to which it would be possible to build a product in compliance with the Interface without infringing such claim (even if in the same patent as Necessary Claims); or claims which, if licensed, would require a payment of royalties by the licensor to unaffiliated third parties.

1.23 **“Procedural Appendix”** means that document of the same name attached hereto which is hereby incorporated into this Agreement by reference, as may be amended by DTLA from time to time.

1.24 **“Proprietary Information”** means any and all information relating to the Specification made

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available to Adopter directly by DTLA or its designees or representatives, or by any Fellow Adopter including, without limitation, specifications, software, hardware, firmware, documentation, designs, flow charts, technical data, outlines, blueprints, notes, drawings, prototypes, templates, systems, manuals, know-how, processes and methods of operation.

1.25 **“Specification”** means the specification entitled “5C Digital Transmission Content Protection ” release 1.2 as may be amended from time to time pursuant to Section 3.3.

1.26 **“Robustness Rules”** means the requirements set out in Exhibit C, as such exhibit may be amended by DTLA from time to time pursuant to Section 3.3.

## **2. FEES.**

**2.1 Administration and Disclosure Fee.** Within thirty (30) days of the Effective Date, Adopter shall pay DTLA a nonrefundable sum in the amount of the Annual Administration Fee set out in the Procedural Appendix (the “Annual Administration Fee”). Adopter shall not be entitled to any refund thereof for any reason. Adopter shall pay DTLA the “Per Certificate Fees” set out on the Procedural Appendix in accordance with the procedures for ordering Device Certificates and Device Keys specified in the Procedural Appendix. Upon each anniversary of the Effective Date, or such other date as specified in the Procedural Appendix (the “Annual Payment Date”), Adopter shall pay DTLA the Annual Administration Fee for the following year (or, in the final year of the Term, such portion of the Annual Administration Fee as is specified in the Procedural Appendix). DTLA may, upon at least thirty (30) days notice to Adopter, modify the Annual Administration Fee and Per Certificate Fees payable for the period beginning on the next Annual Payment Date, provided that any increase in such fees shall not exceed an amount commensurate with any increase in DTLA’s costs (including but not limited to the cost of inflation). Without limiting the foregoing, where costs per Device Key or per Fellow Adopter decrease, DTLA shall use commercially reasonable efforts to reduce the Per Certificate Fee or Annual Administration Fee, respectively.

**2.2 Activation.** At any time after Adopter has paid the Annual Administration Fee for the initial year, or any subsequent year, of the Term for the “Small Adopter” or “Large Adopter” category (as selected by Adopter with reference to the Fee Schedule set forth in the Procedural Appendix), Adopter may execute the Activation Notice attached hereto as Exhibit D in accordance with the procedures set out in Exhibit D. Prior to Activation, Adopter is not licensed to distribute any products or components hereunder, and the provisions of Sections 5.2, 5.3, 5.4, 6.1, and 6.2 shall only be applicable after Activation. Any Evaluation Fee (as set out in the Procedural Appendix) which Adopter has paid hereunder for the year in which Adopter elects Activation shall be credited as provided in such Activation Notice against the Annual Administration Fee for such year payable upon Activation.

**2.3 Certificate and Key Fees.** Device Certificates and Device Keys are necessary to manufacture Licensed Products. These are generated under the direction of DTLA and, except in the case that Adopter elects to use a common Device Certificate for certain devices as described in the Procedural Appendix and Compliance Rules, are generated uniquely per device. Following Activation, Device Keys and Device Certificates shall be made available according to the fee schedule set out in the Procedural Appendix, as updated from time to time in accordance with the terms of this Agreement. Prior to Activation, facsimile Device Certificates and facsimile Device Keys shall be issued to Adopter for development purposes. Adopter is cautioned that such facsimile cryptographic materials will not inter-operate with commercial devices.

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### 3. SPECIFICATION; COMPLIANCE RULES; USERS GROUP.

**3.1 Delivery.** Upon Adopter's execution hereof and DTLA's receipt of the applicable fee(s), DTLA shall cause to be distributed to Adopter the relevant portions of Proprietary Information and/or the Specification that Adopter has not previously received.

**3.2 Acknowledgement.** Adopter agrees to provide copies of the Specification, Compliance Rules and Robustness Checklist to those persons having supervisory responsibility for the design and manufacture of Licensed Products and Licensed Components for and on behalf of Adopter, in such manner and at such times as to promote Adopter's compliance with all applicable terms thereof.

**3.3 Changes.** The Specification and the Compliance Rules may be amended from time to time by DTLA only in accordance with this Section 3.3. Adopter shall be required to comply with all amendments (a) to the Compliance Rules within twelve (12) months after notification of the changes has been sent as specified herein or, in extraordinary cases, within such shorter or longer period specified by DTLA and (b) to the Specification within eighteen (18) months after such notice. Changes in the Procedural Appendix, with the exception of the Annual Administration Fees and Per Certificate Fees, shall be effective on no less than thirty (30) days' notice. Changes to the Annual Administration Fees or Per Certificate Fees shall be permitted only as set out in Section 2.1.

**3.3.1** DTLA shall not make any material changes to the Specification (including any changes that would expand the Specification to require new technical features, not included in version 1.2 of the Specification or such later version of the Specification as may be in effect as of the Effective Date, that would create compatibility problems with Licensed Products manufactured prior to such changes); provided, however, that DTLA may make such limited changes, if any, in the Specification as would permit DTCP to be used with transports other than those permitted in version 1.2 of the Specification (or such later version of the Specification as may be in effect as of the Effective Date), which may include but are not limited to USB and MOST. Without limiting the foregoing, DTLA reserves the right to correct any errors or omissions in the Specification or to make changes that would clarify, but not materially amend, alter or expand the Specification, from time to time.

**3.3.2** No later July 10, 2004, Adopter shall manufacture all Licensed Products that implement revocation with the capacity to store, in accordance with the provisions of this Agreement, a revocation list of no less than one kilobyte (1KB) as set forth in Section 7.1.2 of the Specification.

**3.3.3** Except as DTLA, in consultation with owners of Commercial Entertainment Content, may conclude is necessary to ensure and maintain content protection, DTLA shall not make any revisions to the Compliance Rules that would materially increase the cost or complexity of implementations of Licensed Products. Without limiting the foregoing, DTLA shall provide the members of the CPIF (defined in Section 3.4) with at least thirty (30) days' notice of any material changes to the Compliance Rules.

**3.4 Content Protection Implementers Forum.** Adopter has the right to be a member of and to participate in a Content Protection Implementers Forum ("CPIF"), which DTLA shall convene, with which it may exchange views and information regarding DTCP. Members of the CPIF will have the right to participate in interoperability tests for DTCP and review and comment on proposed revisions to the Compliance Rules set forth in a notice from DTLA pursuant to Section 3.3.3.

### 4. REVOCATION.

**4.1 Generally.** The Specification includes means by which the Device Certificates of certain devices may be invalidated, rendering such devices unable to exchange data via DTCP with Licensed Products (generally,

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"Revocation" or "Revoked").

**4.2 Revocation.** DTLA may revoke a Device Certificate when it is required to do so pursuant to Section 4.2.3 or it has otherwise been determined, pursuant to the procedures set forth in the Procedural Appendix, that one or more of the Revocation Criteria have been satisfied.. The "Revocation Criteria" mean the criteria set forth in Sections 4.2.1, 4.2.2 or 4.2.3:

4.2.1 a Device Key and corresponding Device Certificate have been cloned such that the same Device Key and corresponding Device Certificate are found in more than one device or product;

4.2.2 a Device Certificate and/or Device Key has been lost, stolen, intercepted or otherwise misdirected, or made public or disclosed in violation of an Adopter Agreement; or

4.2.3 DTLA is required to revoke a Device Certificate by the National Security Agency, court order, or other competent government authority.

4.2.4 Without limiting the foregoing, DTLA shall not Revoke a Device Certificate (a) based on Adopter's general implementations of the Specification in a model or product line that is not Compliant or otherwise based on Adopter's breach of this Agreement (except that if Adopter has caused any of the circumstances described in Sections 4.2.1 or 4.2.2, the Device Certificate of any device or product in which such a Device Key has been included may be Revoked) or (b) to disable products or devices where the general security of DTCP has been compromised (other than as described in Sections 4.2.1 and 4.2.2) by third parties.

**4.3 Procedure.** The procedures set out in the Procedural Appendix shall govern Revocation and any rescission or cancellation thereof. Such procedures provide for notice and review of DTLA decisions and/or actions regarding Revocation where requested.

**4.4 Remedies.** Except as otherwise expressly provided in this Section 4.4, Adopter's sole recourse with respect to Revocation shall be the objection and arbitration procedures set out in the Procedural Appendix. The Founders, Generator and Eligible Content Participants (defined below) shall each have no liability whatsoever with respect to any Revocation. Without limiting the foregoing, DTLA and the Founders shall not have any liability with respect to any Revocation, and no compensation shall be made to Adopter, except that if DTLA determines that a Revocation was performed in error by DTLA, DTLA, at the request of Adopter may, at DTLA's discretion, (a) rescind the Revocation through substantially the same means as were used to effect the Revocation, or (b) provide for compensation to Adopter (or Adopter's affected customers) for each of its affected devices in an amount equal to the least of (i) the fair market value of each device, (ii) the cost of reworking each device to incorporate a new Device Certificate and Device Keys or (iii) \$25 per device.

## **5. LICENSES.**

**5.1 Development.** Adopter may possess and use the Specification for development of Licensed Products or Licensed Components. Any distribution or disclosure of the Specification or of any product made with the use of the Specification must be in compliance with the other terms hereof.

**5.2 License.** Subject to the other provisions hereof, including payment of all fees required, DTLA grants to Adopter (including its Affiliates) a nonexclusive, nontransferable, nonsublicenseable, worldwide sublicense under the Necessary Claims of the Founders, as well as under any trade secrets or copyrights embodied in the Specification to make, have made, use, import, offer to sell and sell Licensed Products and Licensed Components; provided that such sublicense shall not extend to features of a product which are not required to comply with the Specification or for which there exists a noninfringing alternative, and further does not

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extend to Adopter if Adopter is in violation of Section 5.3 below.

**5.3 Reciprocal Non-Assertion Agreement.** Adopter, on behalf of itself and its Affiliates, promises not to assert or maintain against DTLA or Fellow Adopters and Affiliates thereof, and accepts Fellow Adopters' promise not to assert or maintain, any claim of infringement under its or their respective Necessary Claims, as well as under any trade secrets or copyrights embodied in the Specification for (a) with respect to Fellow Adopters, the making, having made, use, import, offering to sell and sale of Licensed Products and Licensed Components and (b) with respect to the Founders and DTLA, the use of DTCP; provided that in each case such promise shall not extend to features of a product which are not required to comply with the Specification or for which there exists a noninfringing alternative, and further does not extend to any person or entity which is asserting, or whose Affiliate is asserting, a Necessary Claim against Adopter if Adopter (x) is not willfully in material breach of its obligations under the Compliance Rules or Confidentiality Agreement, or (y) is not otherwise in material breach of the Compliance Rules or Confidentiality Agreement, which breach has not been cured or is not capable of cure within thirty (30) days of Adopter's receipt of notice thereof.

**5.4 Content Participant Non Assertion.** Adopter, on behalf of itself and its Affiliates, promises not to assert or maintain against Content Participants and Affiliates thereof any claim of infringement under its or their respective Necessary Claims, as well as under any trade secrets or copyrights embodied in the Specification for Content Participants' using or causing the use of DTCP to protect Commercial Entertainment Content in compliance with their Content Participant Agreements; and accepts Content Participants' promises not to assert or maintain any claim of infringement under their respective Necessary Claims, as well as under any trade secrets or copyrights embodied in the Specification for the making, having made, use, import, offering to sell and sale of Licensed Products and Licensed Components; provided that each such promise shall not extend to features of a product which are not required to comply with the Specification or for which there exists a noninfringing alternative, and further does not extend to any person or entity which is asserting, or whose Affiliate is asserting, Necessary Claims against Adopter if Adopter (x) is not willfully in material breach of its obligations under the Compliance Rules or Confidentiality Agreement, or (y) is not otherwise in material breach of the Compliance Rules or Confidentiality Agreement, which breach has not been cured or is not capable of cure within thirty (30) days of Adopter's receipt of notice thereof.

**5.5 Scope of Use.** This license, and the promises of non-assertion extended or accepted pursuant to Sections 5.3 and 5.4, shall, in each case, extend only to Licensed Products which are Compliant and to Licensed Components, only for transmission of Commercial Entertainment Content under a Device Certificate issued by or under the authority of DTLA following Activation. No license is granted, express or implied, and no promises of non-assertion extended or accepted pursuant to Sections 5.3 and 5.4, for aspects of any technology, standard or product that is not itself part of the Specification (including, by way of example, CSS, MPEG, IEEE 1394 and analog copy protection systems) even though such technology, standard or product may be otherwise mentioned or required by the Specification or Compliance Rules.

**5.6 Proper Use.** The licenses granted herein are subject to and conditioned on the requirements that Adopter shall not produce or sell devices or software (a) under color of this Agreement, or (b) using Confidential and Highly Confidential Information, where such devices or software are designed to circumvent the requirements or effectiveness of the Specification.

## **6. DISTRIBUTION OF PRODUCTS**

**6.1 Licensed Products.** If fully Compliant, Licensed Products may be disposed of in any commercially

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reasonable manner.

**6.2 Licensed Components.** Licensed Components (Schedule 1) may only be furnished to Fellow Adopters and any person or entity that is providing services to Adopter pursuant to the right under Section 5.2 to “have made” Licensed Products or Licensed Components (a “Have Made Party”). Licensed Components (Schedule 2) may only be furnished to Fellow Adopters, DTCP Associates and Have Made Parties. Adopter shall contractually bind any Have Made Party to sell, distribute or otherwise dispose of Licensed Components furnished by or made for Adopter only to Adopter.

## **7. CONFIDENTIALITY.**

**7.1 Treatment.** Adopter shall comply with the terms of Exhibit A (“the Confidentiality Agreement”). The portions of the Specification marked “Confidential” are to be treated as Confidential Information under the Confidentiality Agreement, and the materials designated by DTLA as “Highly Confidential” shall be treated as specified by the Confidentiality Agreement.

**7.2 Compliance with Laws, Export.** Adopter will comply with all applicable rules and regulations of the United States, Japan and other countries and jurisdictions, including those relating to the export or re-export of commodities, software and technical data insofar as they relate to the activities under this Agreement. Adopter agrees that commodities, software and technical data provided under this Agreement are subject to restrictions under the export control laws and regulations of the United States, Japan and other countries and jurisdictions, as applicable, including but not limited to the U.S. Export Administration Act and the U.S. Export Administration Regulations and the Japanese Foreign Exchange and Foreign Trade Law, and shall obtain any approval required under such laws and regulations whenever it is necessary for such export or re-export.

## **8. TERM/TERMINATION.**

**8.1 Termination.** This Agreement shall be effective upon the Effective Date and shall continue until the tenth anniversary of the Effective Date (the “Term”) unless sooner terminated in accordance with any of the following events:

**8.1.1 Termination by Adopter.** Adopter shall have the right to terminate this Agreement at any time upon ninety (90) days’ prior written notice to DTLA.

**8.1.2 Breach Capable of Cure.** In the event that either party (i) materially breaches any of its obligations hereunder, which breach is not cured within thirty (30) days after written notice is given to the breaching party specifying the breach; or (ii) repeatedly breaches any of its obligations hereunder and fails to cure and cease committing such repeated breaches within thirty (30) days after being given written notice specifying the breaches, then the party not in breach may, by giving written notice thereof to the breaching party, terminate this Agreement, upon the expiration of a thirty (30)-day period beginning on the date of such notice of termination.

**8.1.3 Breach Not Capable of Cure.** In the event of a material breach that is not capable of cure under the provisions of Section 8.1.2, the party not in breach may, by giving written notice of termination to the breaching party, terminate this Agreement. Such termination shall be effective upon receipt of such notice of termination.

**8.2 Effect of Termination.** Upon termination or expiration of this Agreement, Adopter shall immediately cease use of Device Certificates and Device Keys. Within thirty (30) days after termination or expiration of

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this Agreement, Adopter shall return such Device Certificates and Device Keys and shall as directed by DTLA: (i) return all other Proprietary Information to DTLA; or (ii) destroy all Proprietary Information in its possession, retaining no copies thereof, and certify such destruction in writing to DTLA. Within thirty (30) days after termination or expiration of this Agreement, Adopter shall discontinue all manufacture, sale, or distribution of Licensed Products and Licensed Components.

**8.3 Survival.** Following termination of this Agreement for any reason, the following Sections shall survive: 4.4, 5.3 and 5.4 (both with respect to the Specification in effect as of the date of termination), 7, 8.2, this Section 8.3, 9, 10, and 11.

## **9. DISCLAIMER AND LIMITATION OF LIABILITY.**

**9.1 Generally.** The following terms limit the ability of the Adopter to recover any damages from DTLA or the Founders in excess of fees actually paid to DTLA by Adopter. These provisions are an essential part of the bargain, without which DTLA would not be willing to enter into this Agreement, nor would the Founders be willing to license their Necessary Claims to DTLA.

**9.2 Disclaimer.** ALL INFORMATION, MATERIALS, KEYS, AND CERTIFICATES ARE PROVIDED "AS IS." DTLA AND THE FOUNDERS AND GENERATOR MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EXPRESSLY DISCLAIM IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY EQUIVALENTS UNDER THE LAWS OF ANY JURISDICTION THAT MIGHT ARISE FROM ANY ACTIVITIES OR INFORMATION DISCLOSURES RELATING TO THIS AGREEMENT. DTLA, THE FOUNDERS AND GENERATOR FURTHER DISCLAIM ANY WARRANTY THAT ANY IMPLEMENTATION OF THE SPECIFICATION, IN WHOLE OR IN PART, WILL BE FREE FROM INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS.

**9.3 Limitation of Liability.** NEITHER DTLA NOR THE FOUNDERS NOR GENERATOR NOR ANY DIRECTOR, OFFICER, AGENT, MEMBERS, REPRESENTATIVES, EQUIVALENT CORPORATE OFFICIAL, OR EMPLOYEE OF ANY OF THEM ACTING IN THEIR CAPACITIES AS SUCH (COLLECTIVELY, THE "AFFECTED PARTIES") SHALL BE LIABLE TO ADOPTER FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF ANY CAUSE OF ACTION RELATING TO THIS AGREEMENT, OR BASED ON MAKING, USING, SELLING OR IMPORTING ANY PRODUCTS OF ADOPTER THAT IMPLEMENT PROPRIETARY INFORMATION OR DTCP, WHETHER UNDER THEORY OF CONTRACT, TORT, INDEMNITY, PRODUCT LIABILITY OR OTHERWISE. TO THE EXTENT THAT ANY COURT OF COMPETENT JURISDICTION RENDERS JUDGMENT AGAINST DTLA NOTWITHSTANDING THE ABOVE LIMITATION, THE AFFECTED PARTIES' AGGREGATE LIABILITY TO ADOPTER IN CONNECTION WITH THIS AGREEMENT SHALL IN NO EVENT EXCEED THE AMOUNTS OF MONEY RECEIVED BY DTLA FROM ADOPTER UNDER THIS AGREEMENT IN ANY ONE YEAR PERIOD.

## **10. REMEDIES.**

**10.1 Indemnification for Wrongful Acts of Adopter.** Adopter shall indemnify and hold DTLA, the Founders and Generator, and their officers, members, representatives, agents, directors, equivalent corporate officials, and employees, harmless from and against any and all any losses, claims, actions, suits,

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proceedings or litigation, and any losses, deficiencies, damages, liabilities, costs and expenses including without limitation, reasonable attorneys' fees and all related costs and expenses, to be paid or otherwise incurred in connection with the defense of any claim, action, suit, proceeding or litigation, which result from any material breach of any covenant, agreement, representation or warranty herein or negligent acts committed by Adopter.

**10.2 Records Audit and Inspection.** DTLA shall have the right, at reasonable times and intervals, to have audited Adopter's books and records to ascertain the propriety of any payment hereunder. Such audit shall be undertaken at the auditing party's sole expense, and the auditor, who shall be a Certified Public Accountant from a major accounting firm, shall only disclose those matters which the auditing party has the right to know under this Agreement, and the results of the audit shall be deemed confidential.

**10.3 Device Inspection.** DTLA may acquire products on the open market for examination. Adopter shall provide reasonable cooperation in affording DTLA an example of any product distributed hereunder if requested, and Adopter shall provide, once per model of product, and under the terms of a non-disclosure agreement equivalent to that document referred to by DTLA as the Evaluation NDA, the service manual for such product in order to assist in evaluation of it. Adopter may, at its option provide further information.

**10.4 Equitable Relief.** DTLA and Adopter agree and acknowledge that due to the unique nature of certain provisions hereof and the lasting effect of and harm from a breach of such provisions, including making available the means for widespread unauthorized copying of copyrighted content intended to be protected using the Specification, if Adopter breaches its obligations hereunder, money damages alone may not adequately compensate an injured party, and that injury to such party may be irreparable, and that specific performance or injunctive relief is an appropriate remedy to prevent further or threatened breaches hereof.

**10.5 Damages Measure and Limitation.** The parties agree that it would be impossible to estimate the amount of damages in the event of certain breaches. In the event of a material breach by Adopter (1) of the Confidentiality Agreement, Adopter shall be liable for one million dollars; (2) that involves the manufacture or distribution of devices or software that fail to protect Device Keys and Device Certificates as provided by the applicable Compliance Rules, Adopter shall be liable in an amount equal to its profits on such devices or software, and in no event less than one million dollars nor more than eight million dollars; and (3) that involves any other provision of this Agreement, Adopter shall be liable in an amount equal to its profits on the affected devices or software, and in no event more than eight million dollars. For purposes of this Section 10.5, a series of substantially related events shall constitute a single material breach. A breach shall be "material" only if it has resulted in or would be likely to result in commercially significant harm to other users of DTCP, including but not limited to Fellow Adopters and Content Participants, or constitute a threat to the integrity or security of DTCP. In addition, the following is a non-exclusive list of circumstances in which, standing alone, there is no material breach of the applicable provisions: (1) if no Confidential Information or Highly Confidential Information was released to a third party not permitted hereunder to have such information or could reasonably have been expected to have been released to such third party as a result of the breach; (2) if Adopter maintains an internal program to assure compliance herewith (including a program to assure maintenance of inventory, samples, and confidentiality of information for purposes in addition to compliance with this Agreement), the breach was inadvertent or otherwise unintentional, and the breach did not have a material adverse effect on the integrity or security of DTCP or the function of DTCP to protect Commercial Entertainment Content; or (3) if Adopter brought the breach to DTLA's attention in a timely manner as required by this Agreement and such breach did not have a material adverse effect on the integrity or security of DTCP or the function of DTCP to protect Commercial Entertainment Content.



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**10.6 Third-Party-Beneficiary Rights.** Compliance of Adopter and other licensees with the terms hereof is essential to maintain the value, integrity, security and performance of DTCP. As part of the consideration granted herein, upon Activation, Adopter agrees that each Content Participant that (i) distributes or transmits, or causes or authorizes the distribution or transmission of, its Commercial Entertainment Content in commercial quantities, or via mass distribution channels such as satellite or cable transmission, to the general public in a form that would, in the course of a transmission up to and including the display or other performance of such Commercial Entertainment Content, use a channel protected by DTCP ("Eligible Content") and (ii) at such time (x) is not willfully in material breach of any term or condition of its Content Participant Agreement, and (y) is not otherwise in material breach of any term or condition of its Content Participant Agreement, which breach has not been cured, or is not capable of cure, within thirty (30) days of Content Participant's receipt of notice thereof by DTLA or any Fellow Adopter (an "Eligible Content Participant"), shall be a third-party beneficiary of this Agreement and shall be entitled, during such period that such Content Participant is an Eligible Content Participant, to bring a claim or action to enforce rights against Adopter in accordance with the procedures set out in the Procedural Appendix with respect to Adopter's implementation of DTCP in any product that receives or transmits data in a format in which Content Participant has made Eligible Content available. Such rights shall be limited to seeking injunctive relief against the manufacture, distribution, commercial use and sale of Adopter's products that are in material breach of the Compliance Rules, and against disclosure of Highly Confidential Information in breach of this Agreement that affects the integrity or security of DTCP, except where such Adopter has willfully breached, or engaged in a pattern or practice of breaching, such obligations, as to which breach attorneys' fees and costs shall be awarded to each Eligible Content Participant that is a prevailing party.

**10.7 Adopter Claims.** Following Activation, and while Adopter (i) is not willfully in material breach of any term or condition of this Agreement, and (ii) is not otherwise in material breach of any term or condition of this Agreement, which breach has not been cured, or is not capable of cure, within thirty (30) days of Adopter's receipt of notice thereof by DTLA, Adopter shall be a third-party beneficiary of each Content Participant Agreement and shall be entitled to bring a claim or action to enforce rights against a Content Participant, in accordance with the third-party-beneficiary procedures set out in the Procedural Appendix, with respect to such Content Participant's compliance with its obligations under Section 5 of its Content Participant Agreement; provided that such rights, pursuant to such Content Participant Agreement, shall be limited to seeking equitable relief, except where such Content Participant has willfully breached, or engaged in a pattern or practice of breaching, such obligations, as to which breach attorneys' fees and costs shall be awarded to each Adopter that is a prevailing party.

## **11. MISCELLANEOUS.**

**11.1 Ownership.** All Proprietary Information and media containing Proprietary Information as provided by DTLA to Adopter shall remain the property of DTLA or its suppliers. Except as expressly provided herein, this Agreement does not give Adopter any license or other right to the Proprietary Information.

**11.2 Entire Agreement.** This Agreement, the exhibits hereto and the Specification constitute the entire Agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral, written or other agreements. Except as otherwise provided herein, this Agreement may not be modified except by written agreement dated subsequent to the date of this Agreement and signed by both parties.

**11.3 Controlled Entities.** Adopter represents and warrants that it has, or will have, the authority to bind its Affiliates to the terms of this Agreement.

**11.4 Money.** All fees shall be paid to DTLA or to its order in United States dollars by wire transfer or

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such other means as DTLA may reasonably specify. If Adopter is required by law to make any withholding from fees due to DTLA, it may make such withholding but shall provide DTLA, at the time of payment, with evidence of such withholding adequate to permit DTLA or its assignee to claim relevant tax credits under applicable treaties.

**11.5 Assignment.** The licenses granted hereunder are personal to Adopter, and Adopter's rights under this Agreement shall not be assigned or otherwise transferred except (a) with the written approval of DTLA (which shall not be unreasonably withheld) or (b) to a corporation controlling, controlled by or under common control with Adopter or to the purchaser of all or substantially all of the outstanding capital stock or assets and obligations of Adopter or to the surviving entity in a merger, reorganization, or other business combination and where notice of such assignment has been provided in advance to DTLA and where the surviving or acquiring company agrees in writing to be bound by this Agreement. Subject to the limitations set forth in this Agreement, this Agreement will inure to the benefit of and be binding upon the parties, their successors and permitted assigns. DTLA may assign or transfer this Agreement to a party that agrees to assume DTLA's obligations hereunder, and will provide Adopter with written notice thereof.

**11.6 Presumptions.** In construing the terms of this Agreement, no presumption shall operate in either party's favor as a result of its counsel's role in drafting the terms or provisions hereof.

**11.7 Governing Law; Jurisdiction.** THIS AGREEMENT, AND ALL THIRD-PARTY-BENEFICIARY CLAIMS BROUGHT PURSUANT HERETO, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY IN SUCH STATE AND WITH THE LAWS OF THE UNITED STATES AS WOULD BE CONSTRUED BY A COURT SITTING IN THE SOUTHERN DISTRICT OF NEW YORK.

11.7.1 IN CONNECTION WITH ANY LITIGATION BETWEEN THE PARTIES HERETO OR IN CONNECTION WITH ANY THIRD-PARTY-BENEFICIARY CLAIM BROUGHT HEREUNDER ARISING OUT OF OR RELATING TO THIS AGREEMENT, EACH PARTY IRREVOCABLY CONSENTS TO: (i) THE EXCLUSIVE JURISDICTION AND VENUE IN THE FEDERAL AND STATE COURTS LOCATED IN THE COUNTY OF NEW YORK, NEW YORK (EXCEPT THAT CLAIMS BROUGHT PURSUANT TO SECTION 10.6 OR 10.7 MAY BE BROUGHT IN A COURT SITTING IN LOS ANGELES COUNTY, CALIFORNIA); AND (ii) THE SERVICE OF PROCESS OF SAID COURTS IN ANY MATTER RELATING TO THIS AGREEMENT BY PERSONAL DELIVERY OR BY MAILING OF PROCESS BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, AT THE ADDRESSES SPECIFIED IN THIS AGREEMENT, OR TO THE AGENT TO BE APPOINTED PURSUANT TO THE SECTION, BELOW;

11.7.2 ADOPTER SHALL APPOINT AN AGENT IN THE STATE OF NEW YORK FOR ACCEPTANCE OF SERVICE OF PROCESS PROVIDED FOR UNDER THIS AGREEMENT AND SHALL NOTIFY DTLA OF THE IDENTITY AND ADDRESS OF SUCH AGENT WITHIN THIRTY (30) DAYS AFTER THE EFFECTIVE DATE

11.7.3 ADOPTER WAIVES ANY OBJECTION TO THE JURISDICTION, PROCESS, AND VENUE OF ANY SUCH COURT, AND TO THE EFFECTIVENESS, EXECUTION, AND ENFORCEMENT OF ANY ORDER OR JUDGMENT (INCLUDING, BUT NOT LIMITED TO, A DEFAULT JUDGMENT) OF SUCH COURT PERTAINING TO THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY THE LAW OF THE PLACE WHERE ENFORCEMENT OR EXECUTION OF ANY SUCH ORDER OR JUDGMENT MAY BE SOUGHT AND BY THE LAW OF ANY PLACE WHOSE LAW MIGHT BE CLAIMED TO BE APPLICABLE REGARDING THE EFFECTIVENESS, ENFORCEMENT, OR

EXECUTION OF SUCH ORDER OR JUDGMENT, INCLUDING PLACES OUTSIDE OF THE STATES OF NEW YORK AND CALIFORNIA AND OF THE UNITED STATES.

**11.7.4 Notice.** All notices to be provided pursuant to this Agreement shall be given in writing and shall be effective when either served by personal delivery or upon receipt via certified mail, return receipt requested, postage prepaid, overnight courier service or sent by facsimile transmission with hard copy confirmation sent by certified mail, in each case to the party at the addresses set out herein.

**11.8 Severability; Waiver.** Should any part of this Agreement judicially be declared to be invalid, unenforceable, or void by any court of competent jurisdiction, the parties agree that the part or parts of this Agreement so held to be invalid, unenforceable, or void shall be reformed by such court without further action by the parties hereto but only to the extent necessary to make such part or parts valid and enforceable. A waiver by either of the parties hereto of any of the covenants to be performed by the other party or any breach thereof shall not be effective unless made in writing and signed by the waiving party and shall not be construed to be a waiver of any succeeding breach thereof or of any covenant herein contained.

**11.9 Most Favored Status.** DTLA will make available to Adopter its substantive commitments or clarifications regarding the standard Adopter Agreement through notice on the DTLA website or otherwise. DTLA also commits that the benefit of any of its clarifications or interpretations of language in the standard Adopter Agreement will be extended to Adopter in accordance with this Section 11.9. Where DTLA agrees to make a change to a particular Fellow Adopter's standard Adopter Agreement, such change shall be reflected in the next regular revision of the standard Adopter Agreement and Adopter will be given the ability to upgrade to such revised Adopter Agreement. Prior to such time as it makes a revised or upgraded standard Adopter Agreement available to all Fellow Adopters that have executed a standard Adopter Agreement, where DTLA has agreed to include language in a particular Fellow Adopter's standard Adopter Agreement that is more favorable than that in the then-current version of the standard Adopter Agreement, DTLA will not enforce the language in Adopter's Adopter Agreement to the extent that such language is less favorable than that found in such Fellow Adopter's Adopter Agreement. For purposes of this Section 11.9, "standard Adopter Agreement" refers to an Adopter Agreement under which a Fellow Adopter receives a license with respect to activities that are the same as those activities licensed hereunder, but does not include, by way of example and not limitation, any Adopter Agreement in which a Fellow Adopter is not licensed to manufacture Licensed Products.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first above written.

**DTLA:**

**By:**

**Name:**

**Title:**

**Date:**

**Adopter:**

**By:**

**Name:**

**Title:**

**Date:**

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**Addresses for notices:**

**DTLA:**

**c/o License Management International,  
LLC**

**225B Cochrane Circle**

**Morgan Hill, CA 95037**

**Adopter:**

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## Procedural Appendix

Unless otherwise expressly stated in this Procedural Appendix, all section references in this Procedural Appendix are references to sections of this Procedural Appendix.

### Fee Schedule

Adopter may select whichever category of license it prefers. Adopter is encouraged to select the category of license which it finds most financially efficient. Adopter may (i) downgrade its elected category not more than once per year upon providing DTLA thirty (30) days prior written notice, provided that, such Adopter shall not be entitled to any refund of the Annual Administration Fee paid for such period; or (ii) upgrade its elected category upon providing DTLA thirty (30) days prior written notice and the full Annual Administration Fee associated with such upgraded category. Future Annual Administration Fees owed by such Adopter shall be due on the anniversary of the effective date of Adopter's notice, provided that the Annual Administration Fee payable for the last year of the Term shall be pro-rated based on the number of months remaining in the Term.

Category	Annual Administration Fee (US \$)	Per Certificate Fee (1999)		
		Restricted	Full	Restricted/Full
Evaluation Fee	\$10,000	N/A	N/A	N/A
Adopter-Small	\$14,000	.06	.06	.07
Adopter-Large	\$18,000	.05	.05	.06

Shipping and Handling - \$200.00 / order

## 12. PROCEDURES FOR HANDLING DEVICE CERTIFICATES AND DEVICE KEYS

Standards for the handling of Device Certificates will be supplied and Adopter agrees to comply with all such standards. These will include, by way of example, requirements that such Device Certificates be kept in a secure place and that a limited number of individuals have access to them. Device Keys are Highly Confidential Information. Standards for the handling of Device Keys will be supplied and Adopter agrees to comply with all such standards. These will include, by way of example, requirements that such Device Keys be kept in a secure place and that a limited number of individuals have access to them.

## 13. PROCEDURE FOR ORDERING DEVICE CERTIFICATES AND DEVICE KEYS

Adopter will be supplied with a form and associated tools for ordering Device Certificates and Device Keys. As set out in the Specification, such Device Certificates will reflect certain capabilities of the device into which they are intended to be installed. The number of Device Certificates and Device Keys which may be ordered will be constrained to the Adopter's reasonably anticipated production run rate. At such time as DTLA makes common Device Keys and common Certificates available, Adopter may elect on the order form, at its option, to order common Device Certificates and Device Keys for Licensed Products that are not capable of performing Sink Functions and for the Source Functions of certain remotely-managed devices (e.g., set-top boxes, smartcard-controlled devices or devices using renewable software) as are identified on such form.

## 14. REVOCATION PROCEDURES

14.1 **Notice of Revocation.** In the event that Revocation is requested, DTLA shall provide any Fellow Adopter to whom DTLA or its designee had issued a Device Certificate for which Revocation has been requested with notice of such requested Revocation, provided, however, that DTLA may, in its sole

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discretion, reduce such notice period where it deems circumstances warrant. If Adopter notifies DTLA in writing that Adopter consents to such Revocation of any Device Certificate issued to it hereunder, or if DTLA is required to Revoke pursuant to Section 4.2.3 of the Agreement, DTLA may take steps to Revoke the applicable Device Certificate.

## **14.2 Assent to Revocation/Dispute Resolution.**

14.2.1 No more than fifteen (15) calendar days after the date of notice from DTLA, Adopter shall notify DTLA whether Adopter desires to contest the grounds for such Revocation. If Adopter notifies DTLA that it does not wish to contest the requested Revocation, or if Adopter fails to respond timely to the notice from DTLA, the Revocation shall be deemed to be without objection and may proceed. If Adopter timely notifies DTLA of its intent to object to the requested Revocation, Adopter shall submit a written statement, under oath, which sets out any facts which disprove or contradict DTLA's stated grounds for Revocation ("Revocation Objection"). Within ten (10) business days after receipt of the Revocation Objection, DTLA shall provide notice of the Revocation Objection and the Revocation Objection itself to the entity that requested the Revocation. Within thirty (30) days after receipt from the DTLA of the notice of the Revocation Objection, the entity or entities that requested Revocation (the "Revocation Initiators") may initiate an arbitration in accordance with the provisions of Section 3.4 to determine whether the requested Revocation may proceed.

14.2.2 **Request for Revocation.** (a) Adopter may seek Revocation by providing proof in a sworn affidavit (the "Adopter Affidavit") of any of the facts relating to any particular Device Certificate and/or associated Device Keys issued to Adopter hereunder that would warrant Revocation of such certificate and satisfy one or more of the Revocation Criteria. The Adopter Affidavit shall be sufficiently detailed that DTLA can determine solely on the basis of such affidavit whether the facts averred on their face would satisfy one or more of the Revocation Criteria.

14.3 **Indemnification.** If Adopter has sought Revocation, it shall indemnify and hold harmless and, at DTLA's option, defend DTLA, the Founders, Generator, any Content Participant that carries the Revocation Information applicable to such Revocation and each of their officers, directors, equivalent corporate officials, employees, representatives and agents ("Indemnified Parties") from and against any and all (i) claims, actions, suits, proceedings or litigation and any losses, deficiencies, damages, liabilities, costs and expenses associated therewith, including but not limited to reasonable attorneys' fees and expenses, arising out of the Revocation or rescission of Revocation of any Device Certificate for which Adopter had sought Revocation and (ii) other costs or expenses incurred by DTLA and/or such Content Participant in connection with such Revocation or rescission of Revocation, including but not limited to any costs and expenses associated with the generation and distribution of information necessary to effect such revocation or rescission and any amounts paid by DTLA to Adopters (or to Adopters' affected customers) or any other party on account of such Revocation. DTLA may require a bond or security reasonably anticipated for such costs.

## **14.4 Arbitration Procedures.**

14.4.1 The parties to the arbitration shall be the Revocation Initiators, the affected Fellow Adopter(s), if any, that objected to the Revocation in accordance with their respective Adopter Agreement and/or any affected person or entity that such Fellow Adopter(s) may designate (such Fellow Adopters and designees, collectively, the "Affected Adopters") and/or at its election, DTLA (collectively, the "Arbitrating Parties"). The Revocation Initiators shall bear the burden of proof in demonstrating, by a preponderance of the evidence, that one or more of the Revocation Criteria have been satisfied.

14.4.2 There shall be a sole arbitrator, who shall be selected by the Arbitrating Parties from the National Panel of Commercial Arbitrators of the American Arbitration Association within fourteen (14) days of the

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initiation of arbitration; provided, however, that in the event the Arbitrating Parties cannot agree on a sole arbitrator within such fourteen (14)-day period, the Revocation Initiators, on the one hand, and the other Arbitrating Parties, on the other hand, shall each, promptly thereafter, select one arbitrator from the National Panel of Commercial Arbitrators of the American Arbitration Association and those two arbitrators shall jointly select a third arbitrator from the National Panel of Commercial Arbitrators of the American Arbitration Association, who shall serve as the presiding arbitrator and chairperson of such arbitration.

14.4.3 The arbitration shall be conducted in Los Angeles, California, in accordance with the International Arbitration Rules of the American Arbitration Association. The language of the arbitration shall be English.

14.4.4 The arbitrator(s) may conduct the arbitration in such manner as he, she or they shall deem appropriate, including the imposition of time limits that he, she or they consider(s) reasonable for each phase of the proceeding, but with due regard for the need to act, and make a final determination, in an expeditious manner. The arbitrator(s) shall set a schedule to endeavor to complete the arbitration within one (1) month.

14.4.5 The arbitrator(s) shall permit and facilitate such limited discovery as he, she or they shall determine is reasonably necessary, taking into account the needs of the Arbitrating Parties and the desirability of making discovery as expeditious and cost-effective as possible, recognizing the need to discover relevant information and that only one party may have such information.

14.4.6 The Arbitrating Parties and the arbitrator(s) shall treat the arbitration proceedings, any related discovery, documents and other evidence submitted to, and the decision of, the arbitrator(s) as Confidential Information. In addition, and as necessary, the arbitrator(s) may issue orders to protect the confidentiality of proprietary information, trade secrets and other sensitive information disclosed in discovery or otherwise during the arbitration.

14.4.7 Any decision by the arbitrator(s) shall be final and binding on the Arbitrating Parties, except that whether the arbitrator(s) exceeded his, her or their authority, as specifically described in this Agreement, shall be fully reviewable by a court of competent jurisdiction. Judgment upon any award shall be entered in a court of competent jurisdiction.

14.4.8 The arbitrator(s) shall be compensated at his, her or their hourly rates, determined at the time of appointment, for all time spent in connection with the arbitration, and shall be reimbursed for reasonable travel and other expenses. The arbitrator(s) shall determine all costs of the arbitration, including the arbitrator(s)' fees and expenses, the costs of expert advice and other assistance engaged by the arbitrator(s), the cost of a transcript and the costs of meeting and hearing facilities.

14.4.9 The arbitrator(s) is (are) empowered solely to determine (a) whether one or more of the Revocation Criteria have been satisfied and (b) if so, only in the circumstance set forth in clause (x) of this Section 3.4.9, whether Revocation is warranted. Any such determination by the arbitrator(s) shall be final and binding on the parties to the arbitration and on DTLA if it is not a party to the arbitration, except that whether the arbitrator(s) exceeded his, her or their, authority as specifically described in this Section 3.4.9, shall be fully reviewable by a court of competent jurisdiction. In any such arbitration, the Affected Adopter(s), if any, may introduce evidence solely to support the position that one or more of the Revocation Criteria have not been satisfied. In the event that the Arbitrator(s) determine(s) that the Revocation Criteria set forth in Section 4.2.2 of the Agreement have been satisfied, (x) if DTLA is a party to the arbitration and objects to Revocation, it shall have the burden of demonstrating, by a preponderance of the evidence, that Revocation is not warranted, and if DTLA fails to meet such burden, Revocation shall be deemed warranted and (y) if DTLA is not a party to the arbitration, Revocation shall be deemed to be warranted. In the event that the arbitrator(s) determine(s) that the Revocation Criteria set forth in Section 4.2.1 of the Agreement have been satisfied, Revocation shall be deemed warranted.

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14.4.10 All costs and fees shall be shared equally as between the Revocation Initiators, on the one hand, and the Affected Adopters, if any, that participate in the arbitration, on the other, provided, however, the arbitrator(s) may otherwise apportion such costs and fees among such Revocation Initiators and Affected Adopters, if any, as the arbitrator(s) may determine.

The prevailing party in such arbitration shall provide to DTLA a copy of the arbitrator(s) decision. If, pursuant to this Section 3.4, Revocation is warranted, DTLA may, after it receives such decision, take steps to cause such Revocation.

## **15. PROCEDURES FOR THIRD PARTY BENEFICIARY CLAIMS**

15.1 Prior to initiating or instituting any third-party-beneficiary claim by a Fellow Adopter ("Adopter Beneficiary Claim" or by a Content Participant ("Content Participant Beneficiary Claim") (each, a "Beneficiary Claim") against Adopter, any other Fellow Adopter or a Content Participant, as the case may be (each, a "Defendant"), a Content Participant Beneficiary (defined below) or Adopter Beneficiary (defined below) (each, a "Third-Party Beneficiary") shall provide DTLA notice and consultation reasonable under the circumstances regarding a proposed Beneficiary Claim; provided that such consultation with DTLA shall not affect such Third-Party Beneficiary's discretion in initiating such a Beneficiary Claim. Such Third-Party Beneficiary shall further provide DTLA with notice of actual filing of a Beneficiary Claim and, upon DTLA's request, any copies of material documents to be filed in such Third-Party Beneficiary's initiation or pursuit of such Beneficiary Claim. DTLA shall cooperate reasonably with such Third-Party Beneficiary in providing appropriate and necessary information in connection with the Beneficiary Claim to the extent that such cooperation is consistent with the preservation of the integrity and security of DTCP and to the extent such cooperation does not involve release of information provided to DTLA by a Content Participant or Fellow Adopter that such Content Participant or Fellow Adopter has designated to DTLA to be its confidential and proprietary information. Documents provided to DTLA under these third-party-beneficiary procedures shall not include any documents filed or to be filed under seal in connection with such Beneficiary Claim.

15.1.1 "Adopter Beneficiaries" means Adopter (for so long as Adopter is in compliance with all of the terms and conditions of this Agreement), together with any one (or more) other Fellow Adopters that is (or are) eligible to bring third-party-beneficiary claims in accordance with a Content Participant Agreement.

15.1.2 "Content Participant Beneficiaries" means any one (or more) Content Participant(s) that is (or are) eligible to bring third-party-beneficiary claims against Adopter in accordance with Section 10.6 of the Agreement or against other Fellow Adopters in accordance with comparable provisions of their respective Adopter Agreements.

15.2 DTLA shall provide all Fellow Adopters (in the case of an Adopter Beneficiary Claim) and all Content Participants (in the case of a Content Participant Beneficiary Claim) with prompt notice of DTLA's receipt of any notice of a Beneficiary Claim against a Defendant (a "Claim Notice"). Within thirty (30) days of the date of mailing of a Claim Notice, all Adopter Beneficiaries (in the case of an Adopter Beneficiary Claim), or all Content Participant Beneficiaries (in the case of a Content Participant Beneficiary Claim), shall elect whether to join such Beneficiary Claim, and the failure of any Fellow Adopter or Content Participant to provide written notice to DTLA of such election and to move to join such Beneficiary Claim within such thirty (30)-day period shall be deemed a waiver of such Fellow Adopter's or Content Participant's third-party-beneficiary right under its respective Adopter Agreement or Content Participant Agreement, as the case may be, with respect to all Beneficiary Claims against Defendant arising out of the alleged breach by Defendant raised in such Beneficiary Claim asserted by the Third-Party Beneficiary. The Third-Party Beneficiary instituting or initiating a Beneficiary Claim shall support, and Defendant shall not object to, any



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motion to so join by such Third-Party Beneficiaries electing to join such Beneficiary Claim within such thirty (30)-day period. Any judgment entered upon such Beneficiary Claim shall be binding on all Fellow Adopters and Content Participants that failed to join such Beneficiary Claim as if they had joined such Beneficiary Claim. Neither any Fellow Adopter's or Content Participant's failure to notify or consult with or to provide copies to DTLA, nor DTLA's failure to give notice to any Fellow Adopter or Content Participant pursuant to these third-party-beneficiary procedures, shall be a defense against any Beneficiary Claim or grounds for a request to delay the granting of any preliminary relief requested.

15.3 Third-Party Beneficiaries shall have no right to, and Adopter agrees that it will not, enter into any settlement that: (i) amends any material term of any Adopter Agreement or Content Participant Agreement; (ii) has an adverse effect on the integrity, performance and/or security of DTCP or on the operation of DTCP with respect to protecting Commercial Audiovisual Content from any unauthorized output, transmission, interception or copying, or the rights of Content Participants with respect to DTCP; or (iii) affects any of DTLA's or the Founders' rights in and to DTCP or any intellectual property right embodied therein, unless DTLA shall have provided prior written consent thereto.

15.4 Nothing contained in these third-party-beneficiary procedures is intended to limit remedies or relief available pursuant to statutory or other claims that a Third-Party Beneficiary may have under separate legal authority.

**EXHIBIT "A"**  
**CONFIDENTIALITY AGREEMENT**

**1. PERMITTED USE.**

1.1 Adopter shall use Proprietary Information, Confidential Information and/or Highly Confidential Information (and tangible embodiments of any of the foregoing) solely for purposes of its own implementation of DTCP in accordance with the terms of this Agreement, and shall not use any mentally-retained recollections thereof to circumvent or copy the methods disclosed in Proprietary Information or Confidential Information or to circumvent any obligations under this Agreement.

**2. CONFIDENTIALITY.**

2.1 Highly Confidential Information. Adopter shall maintain the confidentiality of Highly Confidential Information in the following manner:

2.1.1 Adopter shall employ procedures for safeguarding Highly Confidential Information at least as rigorous as Adopter would employ for its own most highly confidential information, such procedures to include, at a minimum: (1) maintaining on Adopter's premises a secure location in which any and all Highly Confidential Information shall be stored; (2) such secure location shall be accessible only by authorized employees; (3) employees shall sign in and out each time such employees visit such secure location; and (4) when Highly Confidential Information is not in use, such information shall be stored in a locked safe at such secure location.

2.1.2 Adopter may disseminate Highly Confidential Information only to (a) the strictest minimum possible number of regular employees of Adopter: (1) who have an absolute need to know such Highly Confidential Information in order to enable Adopter to implement DTCP in compliance with the Specification; and, (2) who are bound in writing by obligations of confidentiality sufficient to protect the Highly Confidential Information in accordance with the terms of this Agreement; and, (b) a third party that is providing services to Adopter pursuant to the right under Section 5.2 of the Agreement to "have made" Licensed Products or Licensed Components, provided that such third party is either a Fellow Adopter or has executed a non-disclosure agreement with DTLA consistent with the provisions hereof that authorizes such third party to receive such Highly Confidential Information.

2.1.3 Adopter shall not make any copies of any Highly Confidential Information. Adopter may request additional copies of such information. DTLA may in its sole discretion fulfill any such request.

2.2 Confidential Information. Adopter may disclose Confidential Information only to (i) regular employees and individuals retained as independent contractors subject to confidentiality obligations equivalent to those applicable to regular employees of Adopter who have a reasonable need-to-know and are bound in writing by obligations of confidentiality sufficient to protect the Confidential Information in accordance with the terms of this Agreement, (ii) Fellow Adopters, (iii) entities subject to a non-disclosure agreement with DTLA or Adopter that includes provisions substantially in the form of the provisions of this Confidentiality Agreement that relate to Confidential Information, provided that Adopter may disclose to such parties only information that such parties are entitled to receive under their Adopter Agreement or non-disclosure agreement and, in the event that any such entity is not a Fellow Adopter, Adopter shall be liable for any failure by such entity to maintain the confidentiality of Confidential Information in accordance with the terms of this Confidentiality Agreement; or (iv) Adopter's attorneys, auditors or other agents who owe

Adopter a duty of confidentiality and are bound to maintain such information in confidence as a result of a fiduciary relationship. Adopter shall use the same degree of care, but no less than a reasonable degree of care, to avoid unauthorized disclosure or use of Confidential Information as such party employs with respect

to its comparably important confidential information. Notwithstanding the foregoing, Adopter and DTLA may disclose Adopter's status (or lack of it) as a licensee of DTCP, and such disclosure shall not constitute Confidential Information.

### **3. GENERAL.**

3.1 Adopter shall make all reasonable efforts to assist DTLA in relation to any claim, action, suit, proceeding, or litigation with respect to any improper or unauthorized acts of any of its former employees or of such third parties identified in Section 2.1 and 2.2 of this Confidentiality Agreement.

3.2 Contact Person and Provision of DTCP Information. Adopter shall designate a single employee and an alternate employee who shall receive all Confidential Information and Highly Confidential Information (the "Adopter Contact") disclosed by DTLA.

3.3 Notification of Unauthorized Use or Disclosure. Adopter shall notify DTLA in writing immediately upon discovery of any unauthorized use or disclosure of Proprietary Information, and will cooperate with DTLA in every reasonable way to regain possession of Proprietary Information and prevent its further unauthorized use or disclosure.

3.4 Disclosure Required by Law. If Adopter is required by law, regulation or order of a court or other authority of competent jurisdiction to disclose Confidential Information or Highly Confidential Information, Adopter shall notify DTLA as promptly as possible, and shall, upon such DTLA's request, reasonably cooperate in challenging or restricting the scope of such required disclosure.

3.5 Confidentiality Exceptions. The confidentiality restrictions contained in Section 2.10 and 2.2 of this Confidentiality Agreement shall not apply to information that Adopter can demonstrate: (i) is either Confidential or Highly Confidential Information which is or becomes or has become generally known to the public through no breach of Adopter's obligations owed to DTLA hereunder or the Founders and which DTLA failed to remove from public availability or to enjoin such public disclosure within 120 days after the date such information is or becomes generally known as set forth above; or (ii) is or has been developed by Adopter's employees (whether independently or jointly with others) without having access (whether directly or through any intermediaries) to any such Confidential Information or Highly Confidential Information (or any translation, derivation or abstractions of Confidential Information or Highly Confidential Information) and without any breach of Adopter's obligations to DTLA or the Founders, provided that the confidentiality restrictions shall continue to apply to Device Keys provided to Adopter; or (iii) is or has been disclosed to Adopter by a third party which had developed (whether independently or jointly with others) such information without any access (whether directly or through any intermediaries) to any Confidential Information or Highly Confidential Information and without any breach of any such third party's obligations to DTLA or the Founders.

**4. PERIOD.** The confidentiality obligations set forth herein shall continue until the later of (i) three (3) years after the last commercial use of DTCP by DTLA or any Fellow Adopter; or (ii) the expiration of the last copyright that protects any DTCP-encrypted/scrambled content which then exists in any country adhering to the Agreement on Trade Related Aspects of Intellectual Property Rights of the World Trade Organization dated April 15, 1994.

## **5. OTHER TERMS**

Reverse Engineering. Adopter shall under no circumstances reverse engineer, decompile, disassemble or otherwise determine the operation of the Specification, including, without limitation, any encryption/decryption or scrambling/descrambling algorithm or logic of DTCP, except that Adopter may, to the minimum extent necessary for the purposes of testing, engage in debugging, integration or tuning of Adopter's own Licensed Product or Licensed Component to ensure that such Licensed Product or Licensed Component works in its intended operational environment with other Licensed Product or Licensed Component and for no other purposes. Nothing herein shall be construed as an inducement for Adopter to reverse engineer any products of any Adopter or third party.

## **EXHIBIT “B”: COMPLIANCE RULES INTRODUCTION**

### **2. GENERALLY**

2.1 This Exhibit B is divided into separate Parts, which may be applicable, depending on the nature of the Licensed Product, and, in particular, on whether it has Sink Functions or Source Functions. The definitions in this Introduction to Exhibit B apply to each Part of this Exhibit B. Unless otherwise expressly provided, for purposes of this Exhibit B, all section references in any Part of this Exhibit shall be deemed references to sections in such Part.

2.2 Implementation and Robustness: Licensed Products shall comply with the requirements of the Specification, this Exhibit B and Exhibit C.

#### **2.3 Types of Functions**

2.3.1 “**Sink Function**” means the function of a Licensed Product to use DTCP to receive and decrypt Commercial Entertainment Content.

2.3.2 “**Source Function**” means the function of a Licensed Product to use DTCP to encrypt and transmit Commercial Entertainment Content.

2.3.3 A Licensed Product may have both Source Functions and Sink Functions. In such a case, the requirements applicable to Source Functions and Sink Functions shall apply to the respective portions of such Licensed Product.

### **3. DEFINITIONS**

Harmonization. Where a capitalized term is used but not otherwise defined in this Exhibit B, the meaning ascribed thereto elsewhere in the Agreement shall apply.

3.1 “BF Eligible Broadcast Television” shall mean the transmission of any service, Program or schedule of Programs, via an unencrypted digital terrestrial broadcast television transmission originating in any Broadcast Flag Jurisdiction and any substantially simultaneous re-transmission thereof made by an entity located within the country or territory in which the broadcast originated, regardless of whether such entity subjects such further transmission to an access control method..

3.2 “Broadcast Flag” shall mean, (i) for unencrypted digital terrestrial broadcast television transmissions originating in the United States and its territories under the jurisdiction of the Federal Communications Commission, the Redistribution Control descriptor (rc\_descriptor()) described in ATSC Standard A/65B: “Program and System Information Protocol for Terrestrial Broadcast and Cable” and (ii) for unencrypted digital terrestrial broadcast television transmissions originating in any other jurisdiction in which a similar law or regulation requires consumer electronics products and information technology products to respond to a flag or trigger associated with such transmissions so as to restrict unauthorized redistribution of such transmissions (such jurisdictions referenced in clauses (i) and (ii), collectively, “Broadcast Flag Jurisdictions”), such flag or trigger so identified in such law or regulation.

3.3 “Broadcast Flag Jurisdiction” shall have the meaning set forth in the definition of “Broadcast Flag.”

3.4 “Commercial Advertising Messages” shall mean, with respect to any service, Program, or schedule or group of Programs, commercial advertising messages other than advertising relating to such service itself or

the programming contained therein, or the programming of Content Participant, or any of its Affiliates, or any advertising which is displayed concurrently with the display of any part of such Program(s), including but not limited to “bugs,” “frames” and “banners.”

3.5 “Commercial Audiovisual Content” shall mean Commercial Entertainment Content in the form of audiovisual works, as defined in 17 U.S.C. § 101.

3.6 “Commercial Entertainment Content” shall mean works, including audio, video, text and/or graphics, that are (a) not created by the user of the Licensed Product; (b) offered for transmission, delivery or distribution, either generally or on demand, to subscribers or purchasers or the public at large, or otherwise for commercial purposes, not uniquely to an individual or a small, private group; and (c) received by a Commercially-Adopted Access Control Method or as BF Eligible Broadcast Television marked with the applicable Broadcast Flag for the Broadcast Flag Jurisdiction in which such broadcast originated.

3.7 “Commercially-Adopted Access Control Method” shall mean any commercially-adopted access control method, such as CSS, Digicypher, Harmony, DBS and other commercially-adopted access control technology, including digitally-controlled analog scrambling systems, whether now or hereafter in commercial use.

3.8 “Computer Product” shall mean a device which is designed for or permits the end user to install a wide variety of commercially available software applications thereon including, but not limited to, personal computers, handheld “Personal Digital Assistants,” and the like and further includes a subsystem of such a device, such as a graphics card.

3.9 “Conditional Access Delivery” shall mean any delivery of a service, Program, or schedule or group of Programs via a Commercially-Adopted Access Control Method. Without limitation, “Conditional Access Delivery” includes Prerecorded Media; a Pay Television Transmission; Pay-Per-View; Video-on-Demand; Subscription-on-Demand; Non-Premium Subscription Television and Free Conditional Access Delivery. Notwithstanding the foregoing, “Conditional Access Delivery” does not include any service, Program, or schedule or group of Programs, that is a further transmission of a broadcast transmission (i.e., an over-the-air transmission for reception by the general public using radio frequencies allocated for that purpose) that, substantially simultaneously, is made by a terrestrial television broadcast station located within the country or territory in which the entity further transmitting such broadcast transmission also is located, where such broadcast transmission is not subject to a Commercially-Adopted Access Control Method (e.g., is broadcast in the clear and supported by advertising revenues or government mandated fees, without any other charge to members of the public receiving such broadcasts), regardless of whether such entity subjects such further transmission to an access control method. Notwithstanding the foregoing, Conditional Access Delivery shall include any service, Program, or schedule or group of Programs, that both (a) was primarily authored in a format with a resolution equal to or greater than 1000i or 700p (“High Definition”) and (b) is transmitted via a Commercially-Adopted Access Control Method in High Definition, provided that such service, Program, or schedule or group of Programs, is not, substantially simultaneously, transmitted in High Definition by a terrestrial broadcast station located within the same country or territory, where such broadcast transmission is not subject to a Commercially-Adopted Access Control Method.

3.10 “Consensus Watermark” shall mean the watermark technology designated as the “Consensus Watermark” by DTLA.

3.11 “Constrained Image” shall mean an image having the visual equivalent of no more than 520,000 pixels per frame (e.g., an image with resolution of 960 pixels by 540 pixels for a 16:9 aspect ratio). A

Constrained Image may be attained by reducing resolution, for example, by discarding, dithering, or averaging pixels to obtain the specified value. A Constrained Image can be displayed using video processing techniques such as line doubling or sharpening to improve the perceived quality of the image. By way of example, a Constrained Image may be stretched or doubled, and displayed full-screen, on a 1000-line monitor.

3.12 “Copy Freely” refers to Commercial Entertainment Content which, as set out in the Specification, has been encoded so that copy control using DTCP is not asserted, but which remains subject to the rights of the copyright owner.

3.13 “Copy Never” refers to Commercial Entertainment Content which, as set out in the Specification, has been encoded as “Copy Never” indicating that it is not to be reproduced.

3.14 “Copy One Generation” refers to Commercial Entertainment Content which, as set out in the Specification, has been encoded as “Copy One Generation” indicating that only one generation of copies is to be made of it.

3.15 “Decrypted DT Data” shall mean, with respect to any Licensed Product, DT Data that has been received by such Licensed Product’s Sink Function and decrypted by such Licensed Product according to DTCP but has not been (a) protected by a one-generation copy protection technology identified or approved by DTLA pursuant to Sections 2.2.1.1 or 2.2.1.3 of Part 1 of this Exhibit B; (b) protected by a technology approved by DTLA pursuant to Section 4.4.4 of Part 1 of this Exhibit B or (c) passed to an output permitted by Part 1 of this Exhibit B.

3.16 “DT Data” shall mean Commercial Entertainment Content that has been encrypted and transmitted using DTCP. For avoidance of doubt, DT Data includes Decrypted DT Data.

3.17 “Other EPN Eligible Broadcast Television” shall mean the delivery or transmission of any service, Program, or schedule or group of Programs, that (a) is delivered or transmitted via a Commercially-Adopted Access Control Method and (b) does not fall within the definition of “Conditional Access Delivery” or “BF Eligible Broadcast Television.”

3.18 “EPN Field” shall mean the field or bits, described in the Specification, used to indicate that Commercial Audiovisual Content is to be protected using DTCP but that copy control restrictions are not being asserted over such content.

3.19 “Free Conditional Access Delivery” shall mean a Conditional Access Delivery, as to which viewers are not charged any fee (other than government-mandated fees) for the reception or viewing of the programming contained therein.

3.20 “High Definition Analog Form” shall mean a format that is an analog video signal which has a resolution greater than a Constrained Image.

3.21 “High Definition Analog Output” shall mean an output capable of transmitting Commercial Audiovisual Content in High Definition Analog Form.

3.22 “Image Constraint Token” shall mean the field or bits, as described in the Specification, used to trigger the output of a “Constrained Image” in Licensed Products having Sink Functions.



3.23 “Move” shall mean the transmission of Decrypted DT Data from a Licensed Product that has a Source Function to a Licensed Product that has a Sink Function pursuant to and in accordance with Section 3 of Part 1 and Section 3 of Part 2 of this Exhibit B.

3.24 “No More Copies” refers to Commercial Entertainment Content which, as set out in the Specification, has been encoded as “No More Copies,” indicating that it may have originated as Copy One Generation, but that the version being transmitted is from that first generation copy and that therefore no more copies are permitted.

3.25 “Non-Premium Subscription Television” shall mean a Conditional Access Delivery of a service, or schedule or group of Programs (which may be offered for sale together with other services, or schedule or group of Programs), for which subscribers are charged a subscription fee for the reception or viewing of the programming contained therein, other than Pay Television Transmission and Subscription-on-Demand. By way of example, “basic cable service” and “extended basic cable service” in the United States (other than such programming contained therein that does not fall within the definition of Conditional Access Delivery) are “Non-Premium Subscription Television.”

3.26 “Pay-Per-View” shall mean a delivery of a single Program or a specified group of Programs, as to which each such single Program is generally uninterrupted by Commercial Advertising Messages and for which recipients are charged a separate fee for each Program or specified group of Programs. The term “Pay-Per-View” shall also include delivery of a single Program as described above for which multiple start times are made available at time intervals which are less than the running time of such Program as a whole. If a given delivery qualifies both as Pay-Per-View and a Pay Television Transmission, then, for purposes of this Agreement, such delivery shall be deemed Pay-Per-View rather than a Pay Television Transmission.

3.27 “Pay Television Transmission” shall mean a transmission of a service or schedule of Programs, as to which each individual Program is generally uninterrupted by Commercial Advertising Messages and for which service or schedule of Programs subscribing viewers are charged a periodic subscription fee, such as on a monthly basis, for the reception of such programming delivered by such service whether separately or together with other services or programming, during the specified viewing period covered by such fee. If a given delivery qualifies both as a Pay Television Transmission and Pay—Per-View, Video-on-Demand, or Subscription-on-Demand then, for purposes of this Agreement, such delivery shall be deemed Pay-Per-View, Video-on-Demand or Subscription-on-Demand rather than a Pay Television Transmission

3.28 “Prerecorded Media” shall mean the delivery of one or more Programs, in prerecorded and encrypted or scrambled form, on packaged media, such as DVD discs.

3.29 “Program” shall mean any work of Commercial Audiovisual Content.

3.30 “Retention State Field” shall mean the field or bits, as described in the Specification, used to specify the retention period that is associated with a Program received by a Sink Function.

3.31 “Subscription-on-Demand” shall mean the delivery of a single Program or a specified group of Programs for which (i) a subscriber is able, at his or her discretion, to select the time for commencement of exhibition thereof; (ii) where each such single Program is generally uninterrupted by Commercial Advertising Messages; and (iii) for which Program or specified group of Programs subscribing viewers are charged a periodic subscription fee for the reception of programming delivered by such service during the specified viewing period covered by the fee. In the event a given delivery of a Program qualifies both as a

Pay Television Transmission and Subscription-on-Demand, then for purposes of this Agreement, such delivery shall be deemed Subscription-on-Demand rather than a Pay Television Transmission.

3.32 “Transitory Image” shall mean data which has been stored temporarily for the sole purpose of enabling the immediate display of content but which (a) does not persist materially after the content has been displayed and (b) is not stored in a way which permits copying or storing of such data for other purposes.

3.33 “Video-on-Demand” shall mean a delivery of a single Program or a specified group of Programs for which (i) each such individual Program is generally uninterrupted by Commercial Advertising Messages; (ii) recipients are charged a separate fee for each such single Program or specified group of Programs; and (iii) a recipient is able, at his or her discretion, to select the time for commencement of exhibition of such individual Program or specified group of Programs. In the event a delivery qualifies as both Video-on-Demand and a Pay Television Transmission, then for purposes of this Agreement, such delivery shall be deemed Video-on-Demand.

## EXHIBIT B, PART 1: COMPLIANCE RULES FOR SINK FUNCTIONS

### 1. INTRODUCTION

1.1 **Applicability.** This Part 1 of this Exhibit B is applicable to Licensed Products that have a Sink Function.

### 2. SINK FUNCTION OBLIGATIONS REGARDING PERSISTENT STORAGE OF CONTENT

2.1 **Copy Never.** Licensed Products shall be constructed such that Copy Never DT Data received via their Sink Functions may not, once decrypted, be stored except as a Transitory Image or as otherwise permitted in Section 2.1.1:

2.1.1 Copy Never DT Data may be retained (i.e., stored) for such period as is specified by the Retention State Field, solely for purposes of enabling the delayed display of such DT Data. Such retained DT Data shall be stored using a method set forth in Section 2.2. and shall be obliterated or otherwise rendered unusable upon expiration of such period.

2.2 **Permitted Copy One Generation Copies.** A Licensed Product may not make, or cause to be made, a copy of Copy One Generation Decrypted DT Data unless each copy (a) is made as a Transitory Image or (b) is made using a method set out in Section 2.2.1. A Licensed Product may, alternatively, treat such Decrypted DT Data as Copy Never, provided that no retention under Section 2.1.1 of this Part 1 is permitted.

2.2.1 Except as set forth in Sections 2.2.2 and 2.2.3, a Licensed Product may make, or cause to be made, no more than two (2) first-generation copies of Decrypted DT Data, in different formats of storage device or media, by using only the methods described in Section 2.2.1.1 through Section 2.2.1.3:

2.2.1.1 The copy is scrambled or encrypted using a copy protection technology that is identified by DTLA;

2.2.1.2 The copy is stored using an encryption protocol that uniquely associates such copy with a single Licensed Product so that it cannot be played on another device or that no further usable copies may be made thereof (other than copies made from an output permitted by this Agreement or as otherwise permitted under Section 2.3 of this Part 1 or Section 3 of Part 2); or

2.2.1.3 Methods which may be approved by DTLA in the future.

2.2.1.4 Copy One Generation Decrypted DT Data that is copied in a personal video recorder or other bound recording medium pursuant to Section 2.2.1.2 may continue to be treated as Copy One Generation for a period of up to ninety (90) minutes from initial reception of each unit of such data (e.g., frame-by-frame, minute-by-minute, megabyte-by-megabyte, etc.), but in no event shall such unit of data exceed one minute of a Program.

2.2.2 In the event that a Licensed Product supports one (1) or more format(s) of storage devices or media in addition to those in which a copy or copies of Decrypted DT Data are made pursuant to Section 2.2.1, a Licensed Product may make, or cause to be made, one (1) additional first-generation copy of Decrypted DT Data, using any of the methods described in Sections 2.2.1.1 through 2.2.1.3, provided that (a) such DT Data is received by one separate Sink Function having a separate Device Certificate for such additional format of storage device or media and (b) such single copy is made in a format of storage device or media other than a format in which a copy has been made by a recording device supported by another Sink Function in such Licensed Product.

By way of example and not limitation, for purposes of this Section 2.2, the following constitute different formats of storage devices or media: MPEG4 HDD recorder; MPEG2 HDD recorder; DVHS; all DVD-recordable having less than 20GB capacity (for example, DVD-RAM, DVD-RW, DVD+RW or DVD-R); SD Card; Memory Stick; Compact Flash; non-removable RAM; non-removable flash memory.

2.2.3 Each copy made pursuant to Sections 2.2.1, 2.2.2 or 2.4 may be stored on one or more physical storage devices or media, and may include a back-up copy, so long as all such devices, media and back-up copy constitute only a single usable copy (e.g., a back-up copy may be made on HDD or other media and the copy may be stored on RAID-type devices).

2.3 **No More Copies.** A Licensed Product may not make, or cause to be made, an analog copy of Decrypted DT Data that is encoded as No More Copies if the APS trigger bits (as described in the Specification) associated therewith are asserted. A Licensed Product may not make, or cause to be made, a digital copy of any copy of Decrypted DT Data that is encoded as No More Copies except (a) as a Transitory Image or (b) if the Licensed Product deletes or otherwise renders unusable the original copy such that, at any point in time, only a single useable copy persists as between such original and copy thereof.

2.4 **EPN Encoded Content.** A Licensed Product may not make, or cause to be made, a digital copy of Decrypted DT Data for which the associated EPN Field is asserted except (a) as a Transitory Image or (b) if such copy is made using one or more of the methods set out in Section 2.2.1.1 through Section 2.2.1.3. Consistent with the assertion of EPN and with the preceding sentence, a Licensed Product may make, or cause to be made, additional digital copies of Decrypted DT Data for which the associated EPN field has been asserted, provided that each such copy (a) is a Transitory Image or (b) is made using one or more of the methods set out in Section 2.2.1.1 through Section 2.2.1.3. For clarification, Section 2.2.1.2 shall not be read to limit the number of copies that may be made of EPN encoded content, so long as each copy is made using a method set out in Section 2.2.1.1 through Section 2.2.1.3.

### 3. SINK FUNCTION OBLIGATIONS REGARDING MOVE

3.1 **Move.** In the event that a Licensed Product that has a Sink Function receives DT Data via its Sink Function that was transmitted by a Licensed Product that has a Source Function pursuant to Section 3 of Part 2 of this Exhibit B, such Sink Function shall ensure that such DT Data is encoded as No More Copies and, for avoidance of doubt, such DT Data received by such Sink Function may not be treated as Copy One Generation pursuant to Section 2.2.1.4. Any Sink Function that receives DT Data pursuant to this Section 3 shall make or enable the making of only a single copy of such DT Data.

### 4. SINK FUNCTION PERMITTED OUTPUTS.

4.1 **Generally.** As set forth in more detail below, a Licensed Product shall not pass Decrypted DT Data, whether in digital or analog form, to an output except as permitted below.

4.1.1 **Outputs, Video.** A Licensed Product shall not pass any representation or conversion of the video portion of Decrypted DT Data to any output except:

4.1.1.1 Where Decrypted DT Data is output via an approved standard definition analog output in a manner pursuant to Section 4.2 of this Part of this Exhibit B;

4.1.1.2 Where Decrypted DT Data is output in a High Definition Analog Form in a manner pursuant to Section 4.3 of this Part of this Exhibit B;

4.1.1.3 Where Decrypted DT Data is output via a digital output in a manner pursuant to Section 4.4 of this Part of this Exhibit B; or

4.1.1.4 Where the Decrypted DT Data is encoded Copy Freely with the EPN Field unasserted, in which case there are no restrictions on output.

**4.2 Standard Definition Analog Output.** A Licensed Product shall not pass Decrypted DT Data to an NTSC, YUV, SECAM, PAL, or consumer RGB format analog output (including an S-video output for the listed formats) unless (a) the Decrypted DT Data is other than No More Copies, Copy Never, or Copy One Generation or (b) the Licensed Product is incorporated into a Computer Product and the output is either a VGA output or a similar output that was widely implemented as of May 1, 2001 that carries uncompressed video signals with a resolution less than or equal to a Constrained Image to a computer monitor or (c) the Licensed Product generates copy control signals according to the information provided in such Decrypted DT Data. A Licensed Product may, as follows, pass Decrypted DT Data to an output pursuant to clause (c) if it uses the following technologies:

4.2.1 For NTSC analog outputs, however transmitted, the specifications for the Automatic Gain Control and Colorstripe copy control systems (contained in the document entitled "Specification of the Macrovision Copy Protection Process for DVD Products, Revision 7.1.D1, September 30, 1999") and the CGMS-A specifications contained in IEC 61880 (for inclusion on Line 20) or in EIA-608-B (for inclusion on Line 21), provided that, except as otherwise expressly provided in Section 4.2.5, all of such technologies must be utilized in order to meet this requirement;

4.2.2 For PAL, SECAM or YUV outputs, the appropriate specifications (i) for the Automatic Gain Control copy control system (contained in the document entitled "Specification of the Macrovision Copy Protection Process for DVD Products, Revision 7.1.D1, September 30, 1999") and (ii) for the CGMS-A copy control system (contained in IEC 61880 (for inclusion on Line 20) or in EIA-608-B (for inclusion on Line 21) or in EIA-805 (for inclusion on Line 41) for YUV (525/60 systems) outputs or in ETS 300294 for PAL, SECAM, and YUV (625/50 systems) outputs), provided that, except as otherwise expressly provided in Section 4.2.5, both of these technologies must be utilized in order to meet this requirement. (Note; "YUV as used herein means a component video output comprised of a luminance signal (Y) and two color difference signal (U and V) and specifically includes the following component video signals (Y,Pb,Pr), (Y,Cb,Cr), (Y, Db, Dr), and (Y, B-Y, R-Y).)

4.2.3 For 480p progressive scan outputs, the appropriate specification for (i) the Automatic Gain Control copy control system (contained in the document entitled "Specification of the Macrovision AGC Copy Protection Waveforms for DVD Applications with 525p (480p) Progressive Scan Outputs, Revision 1.03 (December 22, 1999)") and (ii) CGMS-A copy control system (contained in, or adapted without material change from, EIAJCPR1204-1 (defining the signal waveform carrying the CGMS-A) and IEC61880 (defining the bit assignment for CGMS-A)).

4.2.4 For SCART connectors, the Automatic Gain Control specifications for the PAL and SECAM signal carried by that connector, provided that the connector must be configured so that the component signal carried by the connector must always be accompanied by a composite signal and such composite signal must provide the only synchronization reference for the component signal.

4.2.5 A Licensed Product shall not apply Analog Protection System (APS) to Copy One Generation Decrypted DT Data, but it shall pass through, without alteration, the value of any APS trigger bits (as

described in the Specification) in accordance with the specifications relating to APS contained in (a) IEC 61880 (for inclusion of such value on Line 20) or EIA-608-B (for inclusion of such value on Line 21) for NTSC outputs or (b) IEC 61880 (for inclusion of such value on Line 20) or EIA-608-B (for inclusion of such value on Line 21) for YUV (525/60 systems) outputs. Notwithstanding the foregoing, the requirements to comply with the CGMS-A specification and to pass any values of APS trigger bits set forth in this Section 4.2 shall not apply to a Licensed Product incorporated into a Computer Product.

4.2.6 DTLA may amend certain obligations set out in this Section 4.2, or specify alternative means to comply, if DTLA finds that the required technologies are not available on fair, reasonable and nondiscriminatory terms.

**4.3 High Definition Analog Output.** Licensed Products shall not pass Decrypted DT Data to a High Definition Analog Output, except as set forth in this Section 4.3:

4.3.1 Licensed Products may pass Decrypted DT Data to a High Definition Analog Output as a Constrained Image.

4.3.2 Licensed Products that recognize and respond to the Image Constraint Token in accordance with the Specification may pass Decrypted DT Data to an output in High Definition Analog Form when authorized by the setting of the Image Constraint Token.

4.3.3 Licensed Products incorporated into Computer Products may pass Copy One Generation or No More Copies Decrypted DT Data without image constraint to SVGA (1024x768 and greater), XGA(1024x768), SXGA and UXGA or similar computer video outputs that were widely implemented as of May 1, 2001 (but not to such typical consumer electronics outputs as NTSC, PAL, SECAM, SCART, YUV, S-Video and consumer RGB, whether or not such outputs are found on any Computer Product) in High Definition Analog Form for devices manufactured prior to December 31, 2005, unless otherwise notified by DTLA.

4.3.4 Licensed Products may pass Decrypted DT Data in High Definition Analog Form to a High Definition Analog Output where such Decrypted DT Data is encoded Copy Freely.

**4.4 Digital Outputs.** Licensed Products may only pass Decrypted DT Data to a digital output as follows:

4.4.1 To DTCP-protected outputs according to the Specification;

4.4.2 In the case of Licensed Products incorporated into Computer Products, as a Constrained Image to DVI outputs of devices manufactured on or prior to December 31, 2005, unless otherwise notified by the DTLA. Such Licensed Products may pass Decrypted DT Data to outputs other than as a Constrained Image (a) for content encoded other than Copy Never, for devices manufactured on or prior to December 31, 2003, unless otherwise notified by the DTLA or (b) for devices manufactured on or prior to December 31, 2005, unless otherwise notified by the DTLA, when such Licensed Products recognize and respond to the Image Constraint Token in accordance with the Specification and are authorized by the setting of the Image Constraint Token;

4.4.3 To any digital output where the Decrypted DT Data is encoded Copy Freely with the EPN Field unasserted; or

4.4.4 Via other methods that may be approved by DTLA in the future.

**4.5 Audio, Analog.** There are no prohibitions relating to analog audio outputs.

4.6 **Audio, Digital.** Except as otherwise provided in Section 4.4, Licensed Products shall not output the audio portions of Decrypted DT Data in digital form except in compressed audio format (such as AC3) or in Linear PCM format in which the transmitted information is sampled at no more than 48 kHz and no more than 16 bits. Adopter is cautioned and notified that the requirements relating to audio may be revised.

## 5. INTERNET RETRANSMISSION.

5.1 **Generally.** The parties acknowledge that Licensed Products shall not permit retransmission of Decrypted DT Data to the Internet except as permitted in Section 4.4.3.

## 6. CONSENSUS WATERMARK NON-INTERFERENCE.

6.1 **Phase-in Period.** During the period commencing on the Effective Date of the Adopter Agreement to which these Compliance Rules are attached and ending (i) with respect to the Consensus Watermark, eighteen (18) months after the date DTLA declares the Consensus Watermark, and (ii) with respect to all other Presently Known Watermark Technologies, on the date DTLA declares the Consensus Watermark, Adopter shall not knowingly design or knowingly develop a Licensed Product or a component thereof for the primary purpose of stripping, interfering with or obscuring such Consensus Watermark or other Presently Known Watermark Technologies in DT Data received by such Licensed Product's Sink Function or knowingly promote or knowingly advertise or knowingly cooperate in the promotion or advertising of Licensed Products or components thereof for the purpose of stripping, interfering or obscuring such watermarks in such DT Data. For purposes of this Section 6.1, a "Presently Known Watermark Technology" shall mean each of the technologies submitted by the Galaxy group of companies and by the Millennium Group to the DVD Copy Control Association, Inc. in August 1999, and the technology defined as "ARIS/SOLANA-4C," as required by the SDMI Portable Device Specification, Part 1, Version 1.0 (July 8, 1999).

6.2 **Protection of the Watermark.** Without limiting the terms of Section 6.1,

6.2.1 Commencing on the date that DTLA declares the Consensus Watermark, Adopter:

6.2.1.1 Shall, when selecting among technological implementations for product features of Licensed Products designed after such date, take commercially reasonable care (taking into consideration the reasonableness of the costs of implementation, as well as the comparability of their technical characteristics, of applicable commercial terms and conditions, and of their impact on Decrypted DT Data and on the effectiveness and visibility of the Consensus Watermark) that Licensed Products and components thereof do not strip, interfere with or obscure the Consensus Watermark in DT Data received by their Sink Functions;

6.2.1.2 Shall not design new Licensed Products or components thereof for which the primary purpose is to strip, interfere with or obscure the Consensus Watermark in DT Data received by their Sink Functions; and

6.2.1.3 Shall not knowingly promote or knowingly advertise or knowingly cooperate in the promotion or advertising of Licensed Products or components thereof for the purpose of stripping, interfering with or obscuring the Consensus Watermark in DT Data received by their Sink Functions.

6.2.2 Commencing eighteen (18) months after DTLA declares the Consensus Watermark, Adopter:

6.2.2.1 Shall not produce Licensed Products or components thereof for which the primary purpose is to strip, interfere with or obscure the Consensus Watermark in DT Data received by their Sink Functions; and

6.2.2.2 Shall not knowingly distribute or knowingly cooperate in distribution of Licensed Products or components thereof for the purpose of stripping, interfering with or obscuring the Consensus Watermark in DT Data received by their Sink Functions.

**6.3 Product Features.** This Section 6 shall not prohibit a Licensed Product or Licensed Component from incorporating legitimate features (i.e., zooming, scaling, cropping, picture-in-picture, compression, recompression, image overlays, overlap of windows in a graphical user interface, audio mixing and equalization, video mixing and keying, downsampling, upsampling, and line doubling, or conversion between widely-used formats for the transport, processing and display of audiovisual signals or data, such as between analog and digital formats and between PAL and NTSC or RGB and YUV formats, as well as other features as may be added to the foregoing list from time to time by DTLA by amendment to these Compliance Rules) that are not prohibited by law, and such features shall not be deemed to strip, interfere with or obscure the Consensus Watermark in DT Data, provided that (a) Adopter shall, at all times after DTLA declares the Consensus Watermark, take commercially reasonable care, in accordance with Section 6.2.1.1, that such features in a Licensed Product do not strip, obscure, or interfere with the Consensus Watermark in DT Data received by such Licensed Product's Sink Function, and (b) Adopter shall not knowingly market or knowingly distribute, or knowingly cooperate in marketing or distributing, such Licensed Products or Licensed Components for the purpose of stripping, obscuring or interfering with the Consensus Watermark in DT Data.

**6.4** Adopter is alerted that the requirements of this Section 6, and the declaration of the Consensus Watermark, may be rescinded by DTLA if, during the two (2)-year period immediately preceding the fourth anniversary of such declaration, the Consensus Watermark has not been implemented by major Content Participants in more than thirty-three percent (33%) of DVD discs of new theatrical motion pictures produced for DVD release by such Content Participants in the United States of America and Canada during such period.



## EXHIBIT B, PART 2: COMPLIANCE RULES FOR SOURCE FUNCTIONS

### 7. SOURCE FUNCTION OBLIGATIONS

7.1 **Applicability.** This Part 2 of this Exhibit B is applicable to Licensed Products that have a Source Function.

### 8. VIDEO CONTENT

8.1 **Encoding Rules.** Adopter acknowledges that Content Participants may only encode Commercial Audiovisual Content using DTCP to prevent or limit copying as set out Sections 2.1.1 and 2.1.2.

8.1.1 **Copy Never.** Commercial Audiovisual Content delivered as follows may be encoded and transmitted as Copy Never Content:

8.1.1.1 Prerecorded Media,

8.1.1.2 Pay-Per-View,

8.1.1.3 Subscription-On-Demand,

8.1.1.4 Video-on-Demand,

8.1.1.5 New business models that are comparable to 8.1.1.1 - 8.1.1.4.

8.1.2 **Copy One Generation.** Commercial Audiovisual Content delivered as follows may be encoded and transmitted as Copy One Generation Content:

8.1.2.1 Prerecorded Media,

8.1.2.2 Pay-Per-View,

8.1.2.3 Subscription-On-Demand,

8.1.2.4 Video-on-Demand,

8.1.2.5 Pay Television Transmission,

8.1.2.6 Non-Premium Subscription Television,

8.1.2.7 Free Conditional Access Delivery,

8.1.2.8 New business models that are comparable to 8.1.2.1 - 8.1.2.7.

8.1.3 **No More Copies.** Licensed Products shall only encode as "No More Copies" content received as Copy One Generation and stored via a method set out in, or approved pursuant to, Exhibit B, Part 1, Section 2.2.

8.1.4 **Encryption Plus Non-assertion Encoding.** Adopter acknowledges that EPN Encoding may not be asserted by Content Participants with respect to Other EPN Eligible Broadcast Television, except by such eligible Content Participants that are identified by DTLA. "EPN Encoding" means such encoding used by or at the direction of a Content Participant so as to cause a service or Program to be encrypted with DTCP but not to be subject to copy control restrictions.

8.2 **Image Constraint.** Adopter acknowledges that Content Participants are not permitted to encode, or direct to be encoded, Commercial Audiovisual Content so as to require Decrypted DT Data to be output as a Constrained Image except with respect to Prerecorded Media, Pay Television Transmission, Video-on-Demand, Subscription-on-Demand, Pay-Per-View, a new business model comparable to any of the foregoing

or any other Conditional Access Delivery of a Program that (i) had a theatrical release or was released direct-to-video and (ii) is transmitted or delivered uninterrupted by Commercial Advertising Messages. Licensed Products that have a Source Function (a “Source Device”) shall set, in accordance with the Specification, the Image Constraint Token associated with a Program so as to permit any Licensed Product with a Sink Function to output such Program in High Definition Analog Form if such Source Device outputs such Program in unprotected High Definition Analog Form other than as permitted in Section 4.3.3 of Part 1 of Exhibit B. In addition, a Source Device shall set, in accordance with the Specification, the Image Constraint Token associated with a Program so as to permit any Licensed Product with a Sink Function to output such Program in High Definition Analog Form if such Program was not specifically encoded to output such Program as a Constrained Image when received by the Source Device.

**8.3 Retention of Copy Never Content.** Except for Prerecorded Media, a Source Device shall set, in accordance with the Specification, the Retention State Field associated with any Commercial Audiovisual Content that is encoded as Copy Never for a period equal to the greatest of (a) ninety (90) minutes from initial receipt of each unit of such data (e.g., frame-by-frame, minute-by-minute, megabyte-by-megabyte, etc.); (b) such other period of time specified in the Specification as a content owner may affirmatively permit; or (c) if the amount of time that such content may be retained in such Source Device is determined pursuant to rules, standards or obligations that were developed under an open-standards process, such period of time specified in the Specification that is closest to, but not exceeding, the period of time that such Source Device is permitted to retain such content. In the case of Prerecorded Media, or if the Commercial Audiovisual Content has previously been retained, the Source Device shall encode the Commercial Audiovisual Content such that no further retention shall be permitted.

## **9. SOURCE FUNCTION OBLIGATIONS REGARDING MOVE**

**9.1** If Copy One Generation content recorded on a personal video recorder or other bound recording medium (“PVR”) has been encoded as No More Copies, such content may be encoded as Copy One Generation and transmitted to a single Sink Function in a single Licensed Product (regardless of whether such Licensed Product has multiple Sink Functions), provided that such content on the originating PVR is deleted or otherwise rendered unusable. Multiple sequential Moves from a Licensed Product having a Source Function to a Licensed Product having a Sink Function, consistent with the requirements set forth in this Section 3 and Section 3 of Part 1, are permitted.

## **10. AUDIO, SUBSCRIPTION AND ON-DEMAND SERVICES.**

**10.1** A Licensed Product may send Commercial Entertainment Content comprising “on-demand” or “pay-per-listen” or subscription audio content that is not part of an audio-visual work to a DTCP input using Full Authentication with Copy Never encoding or with Restricted Authentication. Adopter is advised to consult with the providers of such audio services to determine their requirements for such activities.

## **EXHIBIT “C” ROBUSTNESS RULES**

### **1. CONSTRUCTION**

1.1 **Generally.** Licensed Products as shipped shall meet the applicable Compliance Rules set forth in Exhibit B, and shall be manufactured in a manner clearly designed to effectively frustrate attempts to modify such Licensed Products to defeat the content protection requirements of DTCP set forth in the Specification and Compliance Rules.

1.2 **Defeating Functions.** Licensed Products shall not include:

- (a) switches, buttons, jumpers or software equivalents thereof,
- (b) specific traces that can be cut, or
- (c) functions (including service menus and remote-control functions),

in each case by which the mandatory provisions of the Specification or the Compliance Rules, including the content protection technologies, analog protection systems, output protections, output restrictions, recording protections or recording limitations can be defeated, or by which compressed Decrypted DT Data in such Licensed Products can be exposed to output, interception, retransmission or copying, in each case other than as permitted under this Agreement.

1.3 **Keep Secrets.** Licensed Products shall be manufactured in a manner that is clearly designed to effectively frustrate attempts to discover or reveal Device Keys, the Highly Confidential cryptographic algorithms used in DTCP, and any other Highly Confidential Information.

1.4 **Robustness Checklist.** Before releasing any Licensed Product, Adopter must perform tests and analyses to assure compliance with these Robustness Rules. A Robustness Checklist is attached as Exhibit C-1 for the purpose of assisting Adopter in performing tests covering certain important aspects of these Robustness Rules. Inasmuch as the Robustness Checklist does not address all elements required for the manufacture of a Compliant product, Adopter is strongly advised to review carefully the Specification, Compliance Rules (including, for avoidance of doubt, these Robustness Rules) so as to evaluate thoroughly both its testing procedures and the compliance of its Licensed Products. Adopter shall provide copies of the Specification, the Compliance Rules (including, for avoidance of doubt, these Robustness Rules) and the Robustness Checklist to its supervisors responsible for design and manufacture of Licensed Products.

2. **DATA PATHS.** Decrypted DT Data shall not be available on outputs other than those specified in the Compliance Rules. Within a Licensed Product that includes Sink Functions, Decrypted DT Data shall not be present on any user-accessible buses in analog or unencrypted, compressed form.

2.1 A “user accessible bus” means (a) an internal analog connector that: (i) is designed and incorporated for the purpose of permitting end user upgrades or access or (ii) otherwise readily facilitates end user access or (b) a data bus that is designed for end user upgrades or access, such as an implementation of a smartcard, PCMCIA, Cardbus, or PCI that has standard sockets or otherwise readily facilitates end user access. A “user accessible bus” does not include memory buses, CPU buses, or similar portions of a device’s internal architecture that do not permit access to content in a form useable by end users.

Clause 2.1(a) should be interpreted and applied so as to allow Adopter to design and manufacture its products to incorporate means, such as test points, used by Adopter or professionals to analyze or repair products; but not to provide a pretext for inducing consumers to obtain ready and unobstructed access to internal analog connectors. Without limiting the foregoing, with respect to clause 2.1(a), an internal analog connector shall be presumed to not “readily facilitate end user access” if (i) such connector and the video signal formats or levels of signals provided to such connector, are of a type not generally compatible with the accessible connections on consumer products, (ii) such access would create a risk of product damage, or (iii) such access would result in physical evidence that such access had occurred and would void any product warranty.

2.2 Adopter is alerted that these Robustness Rules may be revised in the future, upon notification by DTLA, to require that, when DTLA deems that it is technically feasible and commercially reasonable to do so, Licensed Products be clearly designed such that when uncompressed, Decrypted DT Data are transmitted over a User Accessible Bus, such Decrypted DT Data are made reasonably secure from unauthorized interception by use of means that can be defeated neither by using Widely Available Tools nor by using Specialized Tools, except with difficulty, other than Circumvention Devices. The level of difficulty applicable to Widely Available Tools is such that a typical consumer should not be able to use Widely Available Tools, with or without instruction, to intercept such Decrypted DT Data without risk of serious damage to the product or personal injury. Adopter is further alerted that, when it is deemed technically feasible and reasonably practicable to do so, DTLA will revise these Robustness Rules to require that uncompressed Decrypted DT Data will be re-encrypted or otherwise protected before it is transmitted over such buses.

**3. METHODS OF MAKING FUNCTIONS ROBUST.** Licensed Products shall be manufactured using at least the following techniques in a manner that is clearly designed to effectively frustrate attempts to defeat the content protection requirements set forth below.

3.1 **Distributed Functions.** In a Licensed Product having Sink Functions, where DT Data is delivered from one part of the Licensed Product to another, whether among integrated circuits, software modules, or otherwise or a combination thereof, the portions of the Licensed Product that perform authentication and decryption and the MPEG (or similar) decoder shall be designed and manufactured in a manner associated and otherwise integrated with each other such that Decrypted DT Data in any usable form flowing between these portions of the Licensed Product shall be reasonably secure from being intercepted or copied except as authorized by the Compliance Rules.

3.2 **Software.** Any portion of the Licensed Product that implements any of the content protection requirements of the Specification or Section 2.2.1.2 of Part 1 of Exhibit B in Software shall include all of the characteristics set forth in Sections 1 and 2 of this Exhibit C. For the purposes of these Robustness Rules, "Software" shall mean the implementation of the content protection requirements as to which this Agreement requires a Licensed Product to be compliant through any computer program code consisting of instructions or data, other than such instructions or data that are included in Hardware. Such implementations shall:

3.2.1 Comply with Section 1.3 of this Exhibit C by a reasonable method including but not limited to: encryption, execution of a portion of the implementation in ring zero or supervisor mode, and/or embodiment in a secure physical implementation; and, in addition, in every case of implementation in Software, using techniques of obfuscation clearly designed to effectively disguise and hamper attempts to discover the approaches used.

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3.2.2 Be designed so as to perform self-checking of the integrity of its component parts such that unauthorized modifications will be expected to result in a failure of the implementation to provide the authorized authentication and/or decryption function. For the purpose of this provision, a “modification” includes any change in, or disturbance or invasion of, features or characteristics, or interruption of processing, relevant to Sections 1 and 2 of this Exhibit C. This provision requires at a minimum the use of “signed code” or more robust means of “tagging” operating throughout the code.

3.3 **Hardware.** Any portion of the Licensed Product that implements any of the content protection requirements of the Specification or Section 2.2.1.2 of Part 1 of Exhibit B in Hardware shall include all of the characteristics set forth in Sections 1 and 2 of this Exhibit C. For the purposes of these Robustness Rules, “Hardware” shall mean a physical device, including a component, that implements any of the content protection requirements as to which this Agreement requires that a Licensed Product be compliant and that (i) does not include instructions or data other than such instructions or data that are permanently embedded in such device or component; or (ii) includes instructions or data that are not permanently embedded in such device or component where such instructions or data have been customized for such Licensed Product or Licensed Component and such instructions or data are not accessible to the end user through the Licensed Product or Licensed Component. Such implementations shall:

3.3.1 Comply with Section 1.3 of this Exhibit C by any reasonable method including but not limited to embedding Device Keys and Highly Confidential cryptographic algorithms in silicon circuitry or firmware that cannot reasonably be read, or employing the techniques described above for Software.

3.3.2 Be designed such that attempts to remove, replace, or reprogram Hardware elements in a way that would compromise the content protection requirements of DTCP (including compliance with the Compliance Rules and Specification) in Licensed Products would pose a serious risk of rendering the Licensed Product unable to receive, decrypt, or decode DT Data. By way of example, a component that is soldered rather than socketed may be appropriate for this means.

3.4 **Hybrid.** The interfaces between Hardware and Software portions of a Licensed Product shall be designed so that the Hardware portions comply with the level of protection that would be provided by a pure Hardware implementation, and the Software portions comply with the level of protection which would be provided by a pure Software implementation.

3.5 **Level of Protection.** “Core Functions” of DTCP include encryption, decryption, authentication, the functions described in Sections 2 (excluding Sections 2.2.1.1 and 2.2.1.3), 3 and 4.4.1 of Part 1 of this Exhibit B and Sections 2.3 and 3 of Part 2 of Exhibit B, maintaining the confidentiality of Highly Confidential cryptographic algorithms and Device Keys and preventing exposure of compressed, Decrypted DT Data. The Core Functions of DTCP shall be implemented in a reasonable method so that they:

3.5.1 Cannot be defeated or circumvented merely by using general-purpose tools or equipment that are widely available at a reasonable price, such as screwdrivers, jumpers, clips and soldering irons (“Widely Available Tools”), or using specialized electronic tools or specialized software tools that are widely available at a reasonable price, such as EEPROM readers and writers, debuggers or decompilers (“Specialized Tools”), other than devices or technologies whether Hardware or Software that are designed and made available for

the specific purpose of bypassing or circumventing the protection technologies required by DTCP ("Circumvention Devices"); and

3.5.2 Can only with difficulty be defeated or circumvented using professional tools or equipment, such as logic analyzers, chip disassembly systems, or in-circuit emulators or any other tools, equipment, methods, or techniques not described in Section 3.5.1 such as would be used primarily by persons of professional skill and training, but not including professional tools or equipment that are made available only on the basis of a non-disclosure agreement or Circumvention Devices.

3.6 Delivery of Decrypted DT Data to the functions described in Part 1 of Exhibit B, Sections 4.2, 4.3, 4.4.2 and 4.6 shall be implemented in a reasonable method that is intended to make such functions difficult to defeat or circumvent by the use of Widely Available Tools, not including Circumvention Devices or Specialized Tools as defined in Section 3.5.1.

3.7 **Advance of Technology.** Although an implementation of a Licensed Product when designed and first shipped may meet the above standards, subsequent circumstances may arise which, had they existed at the time of design of a particular Licensed Product, would have caused such products to fail to comply with these Robustness Rules ("New Circumstances"). If an Adopter has (a) actual notice of New Circumstances, or (b) actual knowledge of New Circumstances (the occurrence of (a) or (b) hereinafter referred to as "Notice"), then within eighteen (18) months after Notice such Adopter shall cease distribution of such Licensed Product and shall only distribute Licensed Products that are compliant with the Robustness Rules in view of the then-current circumstances.

#### 4. EXAMINATION

4.1 **Generally.** A group of Content Participants is being or has been formed ("CPUG"). If CPUG so requests via DTLA, Adopter shall provide, once per model or version of product, any publicly available technical design documentation and, under a reasonable, mutually-acceptable non-disclosure agreement, the service manual for such product, in order to assist in the evaluation of the compliance of such product with these Robustness Rules.

4.2 **Inspection and Report.** Upon a reasonable and good faith belief that a particular hardware model or software version of a Licensed Product designed or manufactured by Adopter does not comply with the Robustness Rules then in effect for such Licensed Product, and upon reasonable notice to Adopter via DTLA, CPUG may request Adopter to submit promptly to an independent expert (acceptable to Adopter, which acceptance shall not be unreasonably withheld) for inspection such detailed information as Adopter deems necessary to understand such product's implementation of the Specification and Compliance Rules, such as would be sufficient to determine whether such product complies with these Robustness Rules. Adopter's participation in this inspection procedure is voluntary; no adverse inference may be drawn from Adopter's refusal of the CPUG request or refusal to participate, in whole or in part, in such inspection. The conduct of such inspection and the contents of any report made by the independent expert shall be subject to the provisions of a nondisclosure agreement, mutually-agreeable to CPUG, Adopter, and such expert, such agreement not to be unreasonably withheld, that also provide protections for Confidential Information and Highly Confidential Information relating to DTCP that are no less stringent than those provided for in this Agreement. Such examination and report shall be conducted at the sole expense of CPUG. Nothing in this paragraph shall limit the role or testimony of such expert, if any, in a judicial proceeding under such

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protective orders as a court may impose. Adopter shall not be precluded or estopped from challenging the opinion of such expert in any forum; nor shall any party be entitled to argue that any greater weight or evidentiary presumption should be accorded to the expert report than to any other relevant evidence. This provision may not be invoked more than once per hardware model or software version, provided that such right of inspection shall include the right to re-inspect the implementation of such model or version if it has been revised in an effort to cure any alleged failure of compliance.

**EXHIBIT C-1**  
**ROBUSTNESS CHECKLIST**

**Notice:** This Checklist is intended as an aid to the correct implementation of the Robustness Rules for hardware and software implementations of the DTCP Specification in a Licensed Product. DTLA strongly recommends that you complete this Checklist for each hardware model or software version of a Licensed Product before releasing any product and at a sufficiently early date in design, as well as during production, to avoid product compliance redesign delays. This Checklist does not address all aspects of the Specification and Compliance Rules necessary to create a product that is fully compliant. Failure to perform necessary tests and analysis could result in a failure to comply fully with the Specification, Compliance Rules or Robustness Rules in breach of the DTLA Adopter Agreement and, as a consequence, in appropriate legal action of DTLA and Eligible Content Participants.

Notwithstanding whether any particular design or production work is being outsourced or handled by contractors to the company, compliance with the above Rules remains the responsibility of this company.

**DATE:** \_\_\_\_\_

**MANUFACTURER:** \_\_\_\_\_

**PRODUCT NAME:** \_\_\_\_\_

**HARDWARE MODEL OR SOFTWARE VERSION:** \_\_\_\_\_

**NAME OF TEST ENGINEER COMPLETING CHECKLIST:**

**TEST ENGINEER:** \_\_\_\_\_

**COMPANY NAME:** \_\_\_\_\_

**11. COMPANY ADDRESS:** \_\_\_\_\_

\_\_\_\_\_

**PHONE NUMBER:** \_\_\_\_\_

**FAX NUMBER:** \_\_\_\_\_



## GENERAL IMPLEMENTATION QUESTIONS

1. Has the Licensed Product been designed and manufactured so there are no switches, buttons, jumpers, or software equivalents of the foregoing, or specific traces that can be cut, by which the content protection technologies, analog protection systems, output restrictions, recording limitations, or other mandatory provisions of the Specification or Compliance Rules can be defeated or by which Decrypted DT Data can be exposed to unauthorized copying?
2. Has the Licensed Product been designed and manufactured so there are no service menus and no functions (such as remote-control functions, switches, check boxes, or other means) that can intercept the flow of Decrypted DT Data or expose it to unauthorized copying?
3. Has the Licensed Product been designed and manufactured so there are no service menus and no functions (such as remote-control functions, switches, check boxes, or other means) that can turn off any analog protection systems, output restrictions, recording limitations, or other mandatory provisions of the Specification or Compliance Rules?
4. Does the Licensed Product have service menus, service functions, or service utilities that can alter or expose the flow of Decrypted DT Data within the device?

If Yes, please describe these service menus, service functions, or service utilities and the steps that are being taken to ensure that these service tools will not be used to expose or misdirect Decrypted DT Data.

5. Does the Licensed Product have service menus, service functions, or service utilities that can turn off any analog protection systems, output restrictions, recording limitations, or other mandatory provisions of the Specification or Compliance Rules?

If Yes, please describe these service menus, service functions, or service utilities and the steps that are being taken to ensure that these service tools will not be used to defeat the content protection features of DTCP (including compliance with the Compliance Rules and the Specification).

6. Does the Licensed Product have any user-accessible buses (as defined in Section 2.1 of the Robustness Rules)?

If so, is Decrypted DT Data carried on this bus?

If so, then:

identify and describe the bus, and whether the Decrypted DT Data is compressed or uncompressed. If such Data is compressed, then explain in detail how and by what means the data is being protected as required by Section 2.2 of the Compliance Rules.

7. Explain in detail how the Licensed Product protects the confidentiality of all keys.

8. Explain in detail how the Licensed Product protects the confidentiality of the confidential cryptographic algorithms used in DTCP.
  
9. If the Licensed Product delivers Decrypted DT Data from one part of the product to another, whether among software modules, integrated circuits or otherwise or a combination thereof, explain how the portions of the product that perform authentication and decryption and the MPEG (or similar) decoder have been designed, associated and integrated with each other so that Decrypted DT Data are secure from interception and copying as required in Section 3.1 of the Robustness Rules.
  
10. Are any DTCP functions implemented in Hardware?  
If Yes, complete hardware implementation questions.
  
11. Are any DTCP functions implemented in Software?  
If Yes, complete software implementation questions.

## **SOFTWARE IMPLEMENTATION QUESTIONS**

12. In the Licensed Product, describe the method by which all Device Keys are stored in a protected manner.
  
  
  
  
  
  
  
  
  
  
13. Using the grep utility or equivalent, are you unable to discover any Device Keys in binary images of any persistent memory devices?
  
  
  
  
  
  
  
  
  
  
14. In the Licensed Product, describe the method used to obfuscate the confidential cryptographic algorithms and Device Keys used in DTCP and implemented in software.
  
  
  
  
  
  
  
  
  
  
15. Describe the method in the Licensed Product by which the intermediate cryptographic values (e.g., values created during the process of authentication between modules or devices within a Licensed Product) are created and held in a protected manner.

16. Describe the method being used to prevent commonly available debugging or decompiling tools (e.g., Softice) from being used to single-step, decompile, or examine the operation of the DTCP functions implemented in software.
  
17. Describe the method by which the Licensed Product self-checks the integrity of component parts in such manner that modifications will cause failure of authorization or decryption as described in Section 3.2.2 of the Robustness Rules. Describe what happens when integrity is violated.
  
18. To assure that integrity self-checking is being performed, perform a test to assure that the executable will fail to work once a binary editor is used to modify a random byte of the executable image containing DTCP functions, and describe the method and results of the test.

## **HARDWARE IMPLEMENTATION QUESTIONS**

19. In the Licensed Product, describe the method by which all Device Keys are stored in a protected manner and how their confidentiality is maintained.
  
  
  
  
  
  
  
  
  
  
20. Using the grep utility or equivalent, are you unable to discover any Device Keys in binary images of any persistent memory devices?
  
  
  
  
  
  
  
  
  
  
21. In the Licensed Product, describe how the confidential cryptographic algorithms and Device Keys used in DTCP have been implemented in silicon circuitry or firmware so that they cannot be read.
  
  
  
  
  
  
  
  
  
  
22. Describe the method in the Licensed Product by which the intermediate cryptographic values (e.g., values created during the process of authentication between modules or devices within a Licensed Product) are created and held in a protected manner.

23. Describe the means used to prevent attempts to replace, remove, or alter hardware elements or modules used to implement DTCP functions.
24. In the Licensed Product, does the removal or replacement of hardware elements or modules that would compromise the content protection features of DTCP (including the Compliance Rules, the Specification, and the Robustness Rules) damage the Licensed Product so as to render the Licensed Product unable to receive, decrypt, or decode DT Data?

**Notice: This checklist does not supersede or supplant the DTCP Specification, Compliance Rules, or Robustness Rules. The Company and its Test Engineer are advised that there are elements of the Specification and Compliance Rules that are not reflected here but that must be complied with.**

**SIGNATURES:**

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Signature of Test Engineer with Personal Knowledge of Answers Date

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Printed Name of Test Engineer with Personal Knowledge of Answers

## EXHIBIT D: ACTIVATION NOTICE

The undersigned ("Adopter") having entered into a DIGITAL TRANSMISSION PROTECTION LICENSE AGREEMENT – Development and Evaluation License (the "Adopter Agreement") with the Digital Transmission Licensing Administrator, LLC ("DTLA") hereby activates its rights under the Adopter Agreement in accordance with Section 2.2 of the Adopter Agreement subject to the following:

- (1) Adopter chooses to be a:      Component Supplier ☐  
   Adopter- Small ☐  
   Adopter- Large ☐  
   (choose only one category)
- (2) The fees to be paid in connection with the: (i) activation of the Adopter Agreement and selection of an Adopter category; and (ii) issuance, shipping and handling of Device Certificates and Device Keys, are set forth on Exhibit A to this Activation Notice, which may be amended by DTLA in accordance with the terms of the Adopter Agreement.
- (3) The evaluation fee paid by Adopter shall be credited against the fees associated with the chosen Adopter category.
- (4) Adopter acknowledges and agrees that DTLA shall ship all orders for Device Certificates and Device Keys in electronic form using Pretty Good Privacy 5.0 or 5.0i (PGP).

☐ Adopter's public key is set forth on the enclosed CD-ROM.

If Adopter does not have or is unable to provide DTLA its PGP public key, Adopter shall, at its own cost and expense, with each order placed with DTLA, designate an agent who shall pick up the generated Device Certificates and Device Keys at a location designated by DTLA.

- (5) All capitalized terms not otherwise defined herein shall have the meanings set forth in the Adopter Agreement.

Please make checks payable to "DTLA" and send such check, together with an executed copy of this Activation Notice and, if available, a CD-ROM containing Adopter's public key, to the following address:

Digital Transmission Licensing Administrator  
c/o License Management International, LLC  
225 B Cochrane Circle  
Morgan Hill CA 95037

Please call for wire information.

\_\_\_\_\_  
Company Name  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



**EXHIBIT A  
TO THE  
ACTIVATION NOTICE**

**ADOPTER CATEGORY ADMINISTRATION FEES**

Component Supplier: \$14,000  
Small Adopter Fee: \$14,000  
Large Adopter Fee: \$18,000

**DEVICE CERTIFICATE AND DEVICE KEY FEES**

<b>CATEGORY</b>	<b>PER CERTIFICATE FEE</b>		
	<b>RESTRICTED AKE</b>	<b>FULL AKE</b>	<b>RESTRICTED/ FULL AKE</b>
Small Adapter	.06	.06	.07
Large Adopter	.05	.05	.06

Shipping and Handling Fee: \$200.00 per order

## CONTENT PARTICIPANT AGREEMENT: AUDIOVISUAL VERSION

This Content Participant Agreement (the “Agreement”) is effective as of \_\_\_\_\_ (the “Effective Date”), by and between: Digital Transmission Licensing Administrator, LLC, a Delaware limited liability company (“Licensor”); and the entity which is named immediately below (together with its Affiliates, “Content Participant”):

Name of Content Participant:

Location of Principal office:

Jurisdiction under which Incorporated:

### W I T N E S S E T H:

WHEREAS, a group of companies identified below as the Founders has developed a certain method for encryption, decryption, key exchange, authentication and renewability for purposes of protecting certain digital content from unauthorized interception and copying (“DTCP”), which method is described in the specification entitled “5C Digital Transmission Content Protection” Release 1.20, as from time to time may be modified by the Founders (defined below) in accordance with Section 3.7 hereof (the “Specification”);

WHEREAS, the Founders have licensed DTCP to Licensor for purposes of Licensor’s further licensing DTCP and administering such licenses;

WHEREAS, Content Participant wishes to have the right, subject to the terms and conditions set forth herein, to use DTCP, or to cause DTCP to be used, to protect its Commercial Audiovisual Content (defined below) and to obtain certain other rights, including but not limited to certain rights to seek revocation of Device Certificates (defined below) as may be granted to Content Participant hereunder;

WHEREAS, Content Participant intends that any permitted copies of its Commercial Entertainment Content are to be used for non-commercial purposes;

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements set forth herein, the parties hereto hereby agree as follows:

1. DEFINITIONS. In addition to terms defined elsewhere in this Agreement, the following terms shall have the following meanings:

“Administration Fee” shall have the meaning set forth in Section 4.1.

“Adopter” shall mean any Founder or any other entity that has executed an Adopter Agreement with Licensor and delivered it to Licensor or its designee, and shall include any Affiliate of such entity.

“Adopter Agreement” shall mean any Digital Transmission Protection License Agreement entered into by Licensor and any adopter of DTCP.

“Adopter Beneficiary” shall have the meaning set forth in Section 11.2.

“Adopter Beneficiary Claim” shall have the meaning set forth in Section 11.2.

“Affiliate” shall mean, with respect to any person or entity, any other person or entity that directly or indirectly Controls, is Controlled by or under common Control with such person or entity. “Control” means the possession of beneficial ownership of more than fifty percent (50%) of the stock or other similar interest entitled to vote for the election of the Board of Directors or similar managing authority.

“Agreement” shall have the meaning set forth in the preamble to this Agreement.

“AV Content Participant Agreement” shall mean this Agreement and any other Content Participant Agreement: Audiovisual Version, substantially in the form of this Agreement, as may be amended from time to time in accordance with Section 3.7 hereof, entered into by Licensor and a Fellow AV Content Participant.

“AV Content Participant Beneficiaries” shall have the meaning set forth in Section 3.4.

“AV Content Participant Beneficiary Claim” shall have the meaning set forth in Section 3.4.

“AV Content Participant User Group” shall have the meaning set forth in Section 3.1.

“Beneficiary Claim” shall have the meaning set forth in Exhibit A.

“BF Eligible Broadcast Television” shall mean the transmission of any service, Program or schedule of Programs, via an unencrypted digital terrestrial broadcast television transmission originating in any Broadcast Flag Jurisdiction and any substantially simultaneous re-transmission thereof made by an entity located within the country or territory in which the broadcast originated, regardless of whether such entity subjects such further transmission to an access control method.

“Broadcast Flag” shall mean, (i) for unencrypted digital terrestrial broadcast television transmissions originating in the United States and its territories under the jurisdiction of the Federal Communications Commission, the Redistribution Control descriptor (rc\_descriptor()) described in ATSC Standard A/65B: “Program and System Information Protocol for Terrestrial Broadcast and Cable” and (ii) for unencrypted digital terrestrial broadcast television transmissions originating in any other jurisdiction in which a similar law or regulation requires consumer electronics products and information technology products to respond to a flag or trigger associated with such transmissions so as to restrict unauthorized redistribution of such transmissions (such jurisdictions referenced in clauses (i) and (ii), collectively, “Broadcast Flag Jurisdictions”), such flag or trigger so identified in such law or regulation.

“Broadcast Flag Jurisdiction” shall have the meaning set forth in the definition of “Broadcast Flag.”

“Claim Notice” shall have the meaning set forth in Exhibit A.

“Commercial Advertising Messages” shall mean, with respect to any service, Program, or schedule or group of Programs, commercial advertising messages other than (a) advertising relating to such service itself or the programming contained therein, (b) the programming of Content Participant or any of its Affiliates, or (c) any advertising which is displayed concurrently with the display of any part of such Program(s), including but not limited to “bugs,” “frames” and “banners.”

“Commercial Audiovisual Content” shall mean Commercial Entertainment Content in the form of audiovisual works, as defined in 17 U.S.C. § 101.

“Commercial Entertainment Content” shall mean works, including audio, video, text and/or graphics, that are (a) not created by the user of the Licensed Product; (b) offered for transmission, delivery or distribution, either generally or on demand, to subscribers or purchasers or the public at large, or otherwise for commercial purposes, not uniquely to an individual or a small, private group; and (c) received by a Commercially-Adopted Access Control Method or as BF Eligible Broadcast Television marked with the applicable Broadcast Flag for the Broadcast Flag Jurisdiction in which such broadcast originated .

“Commercially-Adopted Access Control Method” shall mean any commercially-adopted access control method, such as CSS, Digicypher, Harmony, DBS and any other commercially-adopted access control technology, including digitally-controlled analog scrambling systems, whether now or hereafter in commercial use.

“Comparable” shall mean, when used in connection with a Defined Business Model and an Undefined Business Model, that such Undefined Business Model

approximates such Defined Business Model more closely than it approximates any other Defined Business Model.

“Compliance Rules” shall mean both the requirements set out in the exhibit entitled “Compliance Rules” and the exhibit entitled “Robustness Rules” to each Adopter Agreement, as such exhibits may be revised by Licensor from time to time in accordance with Section 3.7 hereof.

“Conditional Access Delivery” shall mean any delivery of a service, Program, or schedule or group of Programs via a Commercially-Adopted Access Control Method. Without limitation, “Conditional Access Delivery” includes Prerecorded Media; a Pay Television Transmission; Pay-Per-View; Video-on-Demand; Subscription-on-Demand; Non-Premium Subscription Television and Free Conditional Access Delivery. Notwithstanding the foregoing, “Conditional Access Delivery” does not include any service, Program, or schedule or group of Programs, that is a further transmission of a broadcast transmission (i.e., an over-the-air transmission for reception by the general public using radio frequencies allocated for that purpose) that, substantially simultaneously, is made by a terrestrial television broadcast station located within the country or territory in which the entity further transmitting such broadcast transmission also is located, where such broadcast transmission is not subject to a Commercially-Adopted Access Control Method (e.g., is broadcast in the clear and supported by advertising revenues or government-mandated fees, without any other charge to members of the public receiving such broadcasts), regardless of whether such entity subjects such further transmission to an access control method. Notwithstanding the foregoing, Conditional Access Delivery shall include any service, Program, or schedule or group of Programs, that both (a) was primarily authored in a format with a resolution equal to or greater than 1000i or 700p (“High Definition”) and (b) is transmitted via a Commercially-Adopted Access Control Method in High Definition, provided that such service, Program, or schedule or group of Programs, is not, substantially simultaneously, transmitted in High Definition by a terrestrial broadcast station located within the same country or territory, where such broadcast transmission is not subject to a Commercially-Adopted Access Control Method.

“Confidential Information” shall mean Proprietary Information that is either marked “confidential” or “proprietary” when disclosed in written form or indicated as “confidential” or “proprietary” when disclosed orally and confirmed in writing within thirty (30) days after such disclosure, provided that “Confidential Information” shall not include information described in Sections 2.5(i) – 2.5(iii) of the Confidentiality Agreement.

“Confidentiality Agreement” shall have the meaning set forth in Section 7.1.

“Content Participant” shall have the meaning set forth in the preamble to this Agreement.

“Content Participant Agreement” shall mean any Content Participant Agreement entered into by Licensor and a Fellow Content Participant, including but not limited to an AV Content Participant Agreement.

“CP Affidavit” shall have the meaning set forth in Section 6.4.

“DTCP” shall have the meaning set forth in the first recital to this Agreement.

“Defendant” shall have the meaning set forth in Exhibit A.

“Defined Business Model” shall mean Prerecorded Media, Video-on-Demand, Pay-Per View, Pay Television Transmission, Subscription-on-Demand, Non-Premium Subscription Television, Free Conditional Access Delivery, BF Eligible Broadcast Television or Other EPN Eligible Broadcast Television.

“Device Certificate” shall mean a cryptographically encoded value which may be provided by Licensor or its designee and which authorizes a device to exchange certain Commercial Entertainment Content.

“Device Keys” shall mean cryptographic values that may be provided to an Adopter by Licensor or its designee for use in devices and include the “Private Device Key” and “Public Device Key”, and keys associated with “Restricted Authentication”, all identified in the Specification.

“Effective Adopter Agreements” shall have the meaning set forth in Section 3.6.2.

“Effective Date” shall have the meaning set forth in the preamble to this Agreement.

“Eligible AV Content Participant” shall have the meaning set forth in Section 3.2.

“Eligible Content” shall have the meaning set forth in Section 3.2.

“encode, or direct to be encoded, using EPN” shall mean, with respect to Commercial Audiovisual Content, to encode or direct to be encoded such Commercial Audiovisual Content so as to cause the EPN Field (as defined in the Compliance Rules) to be asserted in accordance with Chapter 6 of the Specification.

“Encoding Rules” shall mean the obligations set forth in Sections 5.1(a), (b), (d) and (e) and 5.3 .

“EPN” shall mean the encoding method known as "Encryption Plus Non-Assertion" that indicates that Commercial Audiovisual Content is to be protected using DTCP but that copy control restrictions are not being asserted with respect to such content.

“Exhibition” shall include the display of a Program on a television receiver, computer screen, monitor or other device.

“FAB” shall have the meaning set forth in Section 3.8.

“Fellow AV Content Participant” shall mean Content Participant and any other provider of Commercial Audiovisual Content that has entered into an AV Content Participant Agreement.

“Fellow Content Participant” shall mean Content Participant and any other provider of Commercial Entertainment Content that has entered into a Content Participant Agreement.

“Form Adopter Agreement” shall mean the version of the form Digital Transmission Protection License Agreement that is appended hereto as Exhibit E.

“Founders” shall mean Hitachi, Ltd., Intel Corporation, Matsushita Electric Industrial Co., Ltd., Sony Corporation and Toshiba Corporation.

“Free Conditional Access Delivery” shall mean a Conditional Access Delivery, as to which viewers are not charged any fee (other than government-mandated fees) for the reception or viewing of the programming contained therein.

“Highly Confidential Information” shall mean Proprietary Information that is marked “Highly Confidential Information” when disclosed in written form.

“Image Constraint Token” shall mean the Image\_Constraint\_Token field, as defined in the Specification, used to trigger the output of a “Constrained Image” in Licensed Products having Sink Functions.

“Interface” shall mean the protocols (including cryptographic algorithms), packet formats and data structures disclosed in the Specification.

“Licensed Product” shall have the meaning set forth in the Adopter Agreement.

“Licensor” shall have the meaning set forth the preamble to this Agreement.

“Major AV Content Participant” shall mean, during the course of any year, any Fellow AV Content Participant that either is a member of the MPAA or has generated U.S. box office revenues from theatrical releases of feature films in the immediately prior year that are at least as great as the MPAA member company with the lowest U.S. box office revenues from theatrical releases of feature films for that same year.

“MPAA” shall mean the Motion Picture Association of America.

“Necessary Claims” shall mean claims of a patent or patent application relating to the Interface that must be infringed in order to make a product that complies with the Interface, which are owned or controlled by Licensor, any Founder, any Adopter, Content Participant, any Fellow Content Participant or any of their respective Affiliates. “Necessary Claims” do not include any claims relating to semiconductor manufacturing technology; claims relating to aspects of any technology, standard or product that is not itself part of the Specification (including, by way of example, CSS, MPEG, IEEE 1394 and analog copy protection systems) even though such technology, standard or product may otherwise be mentioned or required by the Specification or Compliance Rules; claims with regard to which it would be possible to build a product in compliance with the Interface in the Specification without infringing such claim (even if in the same patent as Necessary Claims); or claims which, if licensed, would require a payment of royalties by the licensor to unaffiliated third parties.

“Non-Premium Subscription Television” shall mean a Conditional Access Delivery of a service, or schedule or group of Programs (which may be offered for sale together with other services, or schedule or group of Programs), for which subscribers are charged a subscription fee for the reception or viewing of the programming contained therein, other than Pay Television and Subscription-on-Demand. By way of example, “basic cable service” and “extended basic cable service” in the United States (other than such programming contained therein that does not fall within the definition of Conditional Access Delivery) are “Non-Premium Subscription Television.”

“Operative Protection Agreements” shall have the meaning set forth in Section 3.6.2.

“Other EPN Eligible Broadcast Television” shall mean the delivery or transmission of any service, Program, or schedule or group of Programs, that (a) is delivered or transmitted via a Commercially-Adopted Access Control Method and (b) does not fall within the definition of “Conditional Access Delivery” or “BF Eligible Broadcast Television.”



“Party” shall mean a party to this Agreement.

“Pay-Per-View” shall mean a delivery of a single Program or a specified group of Programs, as to which each such single Program is generally uninterrupted by Commercial Advertising Messages and for which recipients are charged a separate fee for each Program or specified group of Programs. The term “Pay-Per-View” shall also include delivery of a single Program as described above for which multiple start times are made available at time intervals which are less than the running time of such Program as a whole. If a given delivery qualifies both as Pay-Per-View and a Pay Television Transmission, then, for purposes of this Agreement, such delivery shall be deemed Pay-Per-View rather than a Pay Television Transmission.

“Pay Television Transmission” shall mean a transmission of a service or schedule of Programs, as to which each individual Program is generally uninterrupted by Commercial Advertising Messages and for which service or schedule of Programs subscribing viewers are charged a periodic subscription fee, such as on a monthly basis, for the reception of such programming delivered by such service whether separately or together with other services or programming, during the specified viewing period covered by such fee. If a given delivery qualifies both as a Pay Television Transmission and Pay-Per-View, Video-on-Demand, or Subscription-on-Demand then, for purposes of this Agreement, such delivery shall be deemed Pay-Per-View, Video-on-Demand or Subscription-on-Demand rather than a Pay Television Transmission.

“Prerecorded Media” shall mean the delivery of one or more Programs, in prerecorded and encrypted or scrambled form, on packaged media, such as DVD discs.

“Presently Known Watermark Technology” shall mean any of the technologies submitted to the DVD Copy Control Association, Inc. in August 1999 by the Galaxy group of companies or by the Millennium Group, and the technology defined as “ARIS/SOLANA-4C,” as required by the SDMI Portable Device Specification, Part 1, Version 1.0 (July 8, 1999).

“Program” shall mean any work of Commercial Audiovisual Content.

“Proprietary Information” shall mean any and all information relating to DTCP or the Specification or Licensor’s or any Founder’s business practices with respect to DTCP, made available to Content Participant by Licensor or its designee or representative or by any Fellow Content Participant or Adopter during the term of this Agreement, including but not limited to specifications, software, hardware, firmware, documentation, designs, flow charts, technical data, outlines, blueprints, notes, drawings, prototypes, templates, systems, manuals, know-how, processes and methods of operation, trade secrets, business plans, strategies, concepts, research, data bases, client or customer lists, financial data, other proprietary or confidential data or information that relates to

Licensor's or a Founder's past, present or future research, development or business activities. In no event does "Proprietary Information" include "copy control information", codes, tags, flags or other indicia or signifiers included in Commercial Audiovisual Content.

"Retention State Field" means the Retention\_State field, as defined in the Specification, used to specify the retention period that is associated with a Program received by a Sink Function.

"Revocation" or "Revoked" shall have the meaning set forth in Section 6.1.

"Revocation Criteria" shall have the meaning set forth in Section 6.4.

"Revocation Information" shall mean information distributed to Fellow AV Content Participants by or under the direction of Licensor for purposes of distributing such information with Commercial Audiovisual Content in order to (i) revoke one or more Device Certificates or (ii) rescind the Revocation of one or more Device Certificates.

"Robustness Rules" shall mean the requirements set out in the exhibit entitled "Robustness Rules" to each Adopter Agreement, as such exhibit may be revised by Licensor from time to time in accordance with Section 3.7 hereof.

"Sink Device" shall mean a Licensed Product that has a Sink Function (as "Sink Function" is defined in the Compliance Rules to the Form Adopter Agreement).

"Source Device" shall mean a Licensed Product that has a Source Function (as "Source Function" is defined in the Compliance Rules to the Form Adopter Agreement).

"Specification" shall have the meaning set forth in the recitals to this Agreement.

"Subscription-on-Demand" shall mean the delivery of a single Program or a specified group of Programs for which (i) a subscriber is able, at his or her discretion, to select the time for commencement of exhibition thereof; (ii) where each such single Program is generally uninterrupted by Commercial Advertising Messages; and (iii) for which Program or specified group of Programs subscribing viewers are charged a periodic subscription fee for the reception of programming delivered by such service during the specified viewing period covered by the fee. In the event a given delivery of a Program qualifies both as a Pay Television Transmission and Subscription-on-Demand, then for purposes of this Agreement, such delivery shall be deemed Subscription-on-Demand rather than a Pay Television Transmission.

“Third-Party Beneficiary” shall have the meaning set forth in Exhibit A.

“Undefined Business Model” shall have the meaning set forth in Section 5.2.

“Video-on-Demand” shall mean a delivery of a single Program or a specified group of Programs for which (i) each such individual Program is generally uninterrupted by Commercial Advertising Messages; (ii) recipients are charged a separate fee for each such single Program or specified group of Programs; and (iii) a recipient is able, at his or her discretion, to select the time for commencement of exhibition of such individual Program or specified group of Programs. In the event a delivery qualifies as both Video-on-Demand and a Pay Television Transmission, then for purposes of this Agreement, such delivery shall be deemed Video-on-Demand.

## 2. LICENSES.

2.1 License to Use DTCP. Subject to the terms and conditions of this Agreement, Licensor hereby grants to Content Participant (including, for avoidance of doubt, its Affiliates), and Content Participant accepts from Licensor, a nonexclusive, nontransferable (except pursuant to Section 12.3), nonsublicenseable, worldwide license under the Necessary Claims of the Founders and Licensor, as well as under any trade secrets or copyrights of the Founders and Licensor embodied in the Specification, to use DTCP, and to cause DTCP to be used, to protect Commercial Audiovisual Content in connection with the distribution and transmission of such Commercial Audiovisual Content, provided that such license shall not extend to Content Participant if Content Participant is in violation of Section 2.2. Licensor represents and warrants that it has received a license from the Founders authorizing Licensor to grant the sublicense to Content Participant as is granted under this Agreement, and that such license shall remain in effect during the term of this Agreement.

2.2 Reciprocal Non-Assertion Covenant. Content Participant hereby covenants that it shall not, and shall cause each of its Affiliates not to, assert against Licensor, any Fellow Content Participant or Affiliate thereof, or any Adopter or Affiliate thereof, any claim of infringement under its Necessary Claims or of any copyrights embodied in the Specification, or any claim of misappropriation of any trade secret embodied in the Specification, with respect to (i) in the case of Adopters, the making, having made, use, import, offering to sell and sale of Licensed Products, (ii) in the case of Fellow Content Participants, the using, or causing the use, of DTCP to protect Commercial Entertainment Content and (iii) with respect to Founders and Licensor, the licensing and use of DTCP, provided that in each case, such covenant shall not extend to any entity that is asserting, or whose Affiliate is asserting, a Necessary Claim against Content Participant if (x) Content Participant is not willfully in material breach of Section 5 or (y) is not otherwise in material breach of Section 5, which breach has not been cured

or is not capable of cure within thirty (30) days of Content Participant's receipt of notice thereof.

2.3 Scope of Use. Without limiting any other term or condition hereunder, the license granted to Content Participant under Section 2.1 shall only extend to distribution or transmission of Commercial Audiovisual Content that is distributed or transmitted in material compliance with Section 5.

### 3. ADDITIONAL RIGHTS GRANTED TO CONTENT PARTICIPANT.

3.1 AV Content Participant User Group. Without limiting the provisions of Section 3.7 addressing material changes in protection or rights, Content Participant shall have the right to participate in a user group consisting of all Fellow AV Content Participants that choose to become a member of such group (the "AV Content Participant User Group"). In the event that Content Participant elects to become a member of the AV Content Participant User Group, it shall so notify Licensor upon such election. Content Participant may, by notice to Licensor, change its status as a member or non-member of the AV Content Participant User Group. Upon request of the Founders, the AV Content Participant User Group, or a majority of the member companies of the MPAA that are AV Content Participants, Licensor shall undertake to have the Founders meet with, and take into account the views expressed by, the AV Content Participant User Group with respect to (a) the Compliance Rules as of the Effective Date, (b) any future technical or other amendments thereto (such as with respect to extending DTCP to additional bi-directional digital buses), and (c) such other matters relating to DTCP as Licensor and the members of the AV Content Participant User Group may agree to discuss.

3.2 Additional Rights for Eligible AV Content Participants. At any time during the term of this Agreement, Content Participant shall be deemed an "Eligible AV Content Participant" and, as such, shall be entitled to the additional rights set out in Sections 3.3, 3.4, 3.5 and 3.7, if Content Participant (a) causes or permits distribution or transmission of its Commercial Audiovisual Content in commercial quantities, or via mass distribution channels, including but not limited to satellite or cable transmission, to the general public in a form that would, in the course of a transmission up to and including the display or other performance of such Commercial Audiovisual Content, use a channel protected by DTCP ("Eligible Content") and (b) at such time (i) is not willfully in material breach of any term or condition of this Agreement, and (ii) is not otherwise in material breach of any term or condition of this Agreement, which breach has not been cured, or is not capable of cure, within thirty (30) days of Content Participant's receipt of notice thereof by Licensor or any Adopter.

3.3 Right to Seek Revocation. For so long as Content Participant is an Eligible AV Content Participant, it shall have the right to seek Revocation of a Device Certificate pursuant to the terms of Section 6.4.

3.4 Content Participant Third-Party-Beneficiary Rights. For so long as Content Participant is an Eligible AV Content Participant, it shall be a third-party beneficiary of each Adopter Agreement (Content Participant, together with any one (or more) other Fellow AV Content Participant(s) that is (or are) Eligible AV Content Participant(s) under its (or their) respective Content Participant Agreement(s), “AV Content Participant Beneficiaries”), and, as such, shall be entitled to bring a claim or action to enforce such rights against an Adopter as are specified in such Adopter’s Adopter Agreement (such claim or action, together with any third-party-beneficiary claim brought by any other AV Content Participant Beneficiary, an “AV Content Participant Beneficiary Claim”), and to have such remedies as are set forth in such Adopter Agreement in accordance with the procedures set forth in Exhibit A, with respect to such Adopter’s implementation of DTCP in any product that is capable of receiving or transmitting data in a format in which Content Participant has made Eligible Content available. Exercise of Content Participant’s third-party-beneficiary rights under any Adopter Agreement shall not constitute an election against any statutory or other extra-contractual remedy or other relief against an Adopter which may be available to Content Participant for the same act which gave rise to the AV Content Participant Beneficiary Claim.

3.5 Enforcement Actions. For so long as Content Participant is an Eligible AV Content Participant, (i) it shall have the right to communicate with Licensor with respect to the status of enforcement actions that are brought by Licensor to enforce an Adopter’s compliance with its Adopter Agreement and that may reasonably implicate Content Participant’s Eligible Content and (ii) Licensor shall respond to inquiries from Content Participant with respect to such enforcement actions, subject to any confidentiality obligations that may apply under any Adopter Agreement.

### 3.6 Documents Relating to DTCP.

3.6.1 Effective Documents. Licensor represents that, as of the Effective Date, the following documents are the only documents establishing the rights and obligations of Adopters with respect to DTCP:

- Adopter Agreements, including their attachments and documents incorporated therein by reference, including the “Procedural Appendix”, “Confidentiality Agreement”, Compliance Rules and “Activation Notice”
- Component Adopter Agreements, which are included within the definition of Adopter Agreements, including their attachments and documents

incorporated therein by reference, including the “Procedural Appendix”, “Confidentiality Agreement”, Compliance Rules and “Activation Notice”

- The Specification
- Other interpretive and clarifying documents relating to the licensing of DTCP posted on the website of Licensor as of the Effective Date, including by way of example and not limitation, policy statements of Licensor, side-letters with certain Adopters, clarifications of the Adopter Agreements and notifications from the Founders
- Non-Disclosure Agreements
- The Content Participant Agreements (with respect to such third-party beneficiary rights as are granted Adopters thereunder) and related Side Letter and Work Plan as posted on the website of Licensor as of the Effective Date.

Licensor further represents that all Adopter Agreements entered into after the Effective Date shall be substantially in the form of the Form Adopter Agreement, provided, however, that such Form Adopter Agreement may be amended from time to time in accordance with Section 3.7.

3.6.2 Consistency with Form Adopter Agreement. Licensor further represents that (i) the Adopter Agreements in effect as of the Effective Date (the “Effective Adopter Agreements”), together with all other documents described in Section 3.6.1 in effect as of the Effective Date (collectively, the “Operative Protection Agreements”), are consistent in all material respects affecting the integrity or security of DTCP, or the operation of DTCP with respect to protecting Commercial Audiovisual Content from any unauthorized output, transmission, interception or copying, or the rights (including, for avoidance of doubt, third-party beneficiary rights) of Content Participant with respect to DTCP, with the version of the Digital Transmission License Agreement that is attached hereto as Exhibit E [the December 2003 version]; and (ii) there are no oral or written amendments or understandings with any Adopter varying or modifying such Effective Adopter Agreements or other Operative Protection Agreements, other than the Operative Protection Agreements with respect to such integrity, security or operation. For the avoidance of doubt, nothing in this Section 3.6.2 or elsewhere in this Agreement shall be construed as imposing on Content Participant any acceptance of, or agreement with respect to, liquidated damages except as provided in Exhibit F. Content Participant may review the Operative Protection Agreements upon reasonable notice to Licensor, provided, however, that Content Participant may only review the Specification if it has entered into a non-disclosure agreement with Licensor.

3.7 Material Changes in Protection or Rights. Licensor may make changes to the Operative Protection Agreements or the Form Adopter Agreement, or issue, execute or amend such other documents or sections of documents with respect to

DTCP as are described in Section 3.7(a), only in accordance with the following provisions:

(a) Licensor shall provide reasonable advance written notice to Content Participant and to all members of the AV Content Participant User Group of, and identify with specificity, (1) any proposed change, addition or supplement to Sections 1 (Definitions), 3 (Specification), 4 (Revocation), 5 (Licenses), 6 (Distribution of Products), 7 (Confidentiality), 8 (Term/Termination) and 10 (Remedies) and 11.6 (Governing Law) of any Effective Adopter Agreement, of the Form Adopter Agreement or of any copy of the Form Adopter Agreement entered into by an Adopter after the date of this Agreement, and to the Compliance Rules of any Effective Adopter Agreement or of the Form Adopter Agreement (including, for avoidance of doubt, any expansion or approval of additional technologies or features contemplated in the Compliance Rules or any change that would excuse an Adopter from complying with, or would provide an alternative means for complying with, the “Standard Definition Analog Output” sections of the Compliance Rules); (2) any change to any other Operative Protection Agreements (other than the Specification) that would affect the integrity or security of DTCP, or the operation of DTCP with respect to protecting Commercial Audiovisual Content from any unauthorized output, transmission, interception or copying, or the rights of Content Participant with respect to DTCP; (3) the proposed issuance, execution or amendment by Licensor of any other document that would affect the integrity or security of DTCP, or the operation of DTCP with respect to protecting Commercial Audiovisual Content from any unauthorized output, transmission, interception or copying, or the rights of Content Participant with respect to DTCP; (4) the identification or approval by Licensor of any methods for copying Copy One Generation Decrypted DT Data (as such terms are defined in the Compliance Rules) pursuant to Section 2.2, Part 1 of Exhibit B to the Form Adopter Agreement or comparable provisions of any Adopter Agreement; (5) any notice to any Adopter that such Adopter may have longer than eighteen (18) months to comply with a change to the Compliance Rules; and (6) any change to the Specification affecting Commercial Audiovisual Content, provided, however, that (x) Licensor’s advance written notice with respect to any such change to the Specification shall be sent to Content Participant only if Content Participant has executed and delivered to Licensor a non-disclosure agreement relating to Highly Confidential Information in the form of Exhibit F (the “Highly Confidential NDA”) and (y) changes to the Specification that may be necessary to map the Specification, with respect to Commercial Audiovisual Content, onto other digital buses for transmission or delivery within the home or other, similar local environment (including but not limited to Universal Serial Bus 1.1 and 2.0, mobile entertainment networks such as MOST, Home PNA, PCI, Bluetooth, Home RF and 802.11) (“home and personal networks”) shall not be regarded as “material” or “adverse” for purposes of, or otherwise subject to, this Section 3.7, provided that the mapping of DTCP to any such bus will result in the same level of protection and security with respect to the use of DTCP on such bus as is provided with respect to the use of DTCP on the IEEE1394 bus; provided, further that DTCP works on any mobile network in a manner

analogous to DTCP over “home and personal networks.” For purposes of this Agreement, each of the items as to which Content Participant is to receive advance written notice as described in clauses (1) to (6), hereof, inclusive, is a “DTLA Proposed Action.”

(b) Changes to map the Specification onto buses that are intended for use outside of home and personal networks (e.g., Ethernet) shall be subject to the terms of this Section 3.7 and shall be deemed to be “material” for purposes of this Section 3.7, and Licensor shall bear the burden in any arbitration initiated pursuant to Section 3.7(f) of proving, by a preponderance of the evidence, that the proposed change is not “adverse.” Identification and approval by Licensor of any methods for copying Copy One Generation and EPN labeled DT Data pursuant to Sections 2.2 or 2.4, Part 1 of Exhibit B to the Form Adopter Agreement or comparable provisions of any Adopter Agreement shall be deemed to be “material” for purposes of this Section 3.7, and Licensor shall bear the burden in any arbitration initiated pursuant to Section 3.7(f) of proving, by a preponderance of the evidence, that the proposed method affords a level of protection comparable to DTCP itself with respect to protecting Commercial Audiovisual Content from unauthorized output, transmission, interception or copying. If Licensor carries its burden, as described in each of the preceding two sentences, then such proposed change or proposed method shall be deemed to be not “adverse”. Licensor shall, during the second calendar quarter of each year, make available to Content Participant any changes to the Form Adopter Agreement not otherwise noticed pursuant to this Section 3.7. If Content Participant objects to any of such changes, Licensor will disclose to Content Participant, upon request, any similar changes that were made to Adopter Agreements.

(c) Except as otherwise expressly provided in this Section 3.7, for so long as Content Participant is an Eligible AV Content Participant, it shall have the right, either on its own or with one or more Fellow AV Content Participants that are each an Eligible AV Content Participant under its AV Content Participant Agreement, to file a written objection to any DTLA Proposed Action that it believes would have a material and adverse effect on the integrity or security of DTCP, or the operation of DTCP with respect to protecting Commercial Audiovisual Content from any unauthorized output, transmission, interception or copying, or the rights of Content Participant with respect to DTCP. Any such objection shall set forth with specificity the alleged material and adverse effects on the integrity or security of DTCP, or the operation of DTCP with respect to protecting Commercial Audiovisual Content from any unauthorized output, transmission, interception or copying, or the rights of Content Participant with respect to DTCP, and shall be delivered to Licensor no later than fifteen (15) business days after the date of service of notice by Licensor pursuant to Section 3.7(a) at the address specified in the notice provisions of this Agreement.

(d) Licensor agrees to consider any such objection given pursuant to Section 3.7(c) in good faith. If Licensor rejects such objection, it shall provide prompt written



notice thereof to Content Participant and any Fellow AV Content Participants that filed a written objection explaining, with specificity, the reasons for such rejection and why the action would not be material or have an adverse effect, including the benefits that would be afforded by the DTLA Proposed Action. Absent delivery to Licensor of written objection from one or more Fellow AV Content Participants pursuant to Section 3.7(c), Licensor may take the applicable DTLA Proposed Action.

(e) In the event Licensor has served such notice to Content Participant by (x) mail postmarked in the same country as the country in which Content Participant is to receive notices, three (3) days shall be added to the prescribed period for filing an objection, (y) mail postmarked in a country other than the country in which Content Participant is to receive notices, fifteen (15) days shall be added to the prescribed period for filing an objection.

(f) If (x) Content Participant is a Major AV Content Participant and has objected to a DTLA Proposed Action pursuant to Section 3.7(c), (y) Content Participant is joined by other Fellow AV Content Participants that are Major AV Content Participants and also are Eligible AV Content Participants under each of their AV Content Participant Agreements, which, together with Content Participant, constitute a majority of such members, and (z) such majority continues to object to the DTLA Proposed Action notwithstanding communication with Licensor pursuant to this Section 3.7, then Content Participant and such Fellow AV Content Participants (the “Arbitrating Content Participants”) shall have the right, within thirty (30) days from receipt of Licensor’s rejection of such objection pursuant to Section 3.7(d), to initiate an arbitration in accordance with the provisions of this Section 3.7(f).

(i) In such arbitration, except as provided in Section 3.7(b), the Arbitrating Content Participants shall have the burden of demonstrating, based on the preponderance of evidence, that the DTLA Proposed Action is material and adversely affects the integrity or security of DTCP, or the operation of DTCP with respect to protecting Commercial Audiovisual Content from any unauthorized output, transmission, interception or copying, or the rights of the Arbitrating Content Participants with respect to DTCP (for purposes of this Section 3.7, “material and adverse”). Changes that only insignificantly diminish the integrity, security or operation of DTCP with respect to protecting Commercial Audiovisual Content from any unauthorized output, transmission, interception or copying, or the rights of Content Participants with respect to DTCP, shall not be deemed “material” or “adverse.” Notwithstanding the above, the arbitrator(s) may, in his, her or their discretion take into consideration the cumulative effect of multiple related changes made within the then-preceding two (2)-year period that are not material and adverse when considered in isolation, provided that in any such consideration the arbitrator(s) afford(s) countervailing weight to any changes made within the then-preceding two (2)-year period, whether related or not, that

have had or, when implemented, will have a beneficial effect on the integrity or security of DTCP or the operation of DTCP with respect to protecting Commercial Audiovisual Content from any unauthorized output, transmission, interception or copying, or the rights of Content Participants with respect to DTCP.

(ii) Where the Arbitrating Content Participants have the burden of demonstrating that the DTLA Proposed Action is material and adverse, if they have carried such burden, then Licensor may not take the DTLA Proposed Action unless Licensor demonstrates, based on the preponderance of evidence, that the DTLA Proposed Action provides a material legal benefit in the form of avoidance of a reasonably-perceived potential legal liability to Licensor, Founders or Adopters which cannot practicably be achieved except by taking the DTLA Proposed Action.

(iii) There shall be a sole arbitrator, who shall be selected by Licensor and the Arbitrating Content Participants (collectively, the “Arbitrating Parties”) from the National Panel of Commercial Arbitrators of the American Arbitration Association within fourteen (14) days of the initiation of arbitration; provided, however, that in the event the Arbitrating Parties cannot agree on a sole arbitrator within such fourteen (14)-day period, Licensor, on the one hand, and the Arbitrating Content Participants, on the other, shall each, promptly thereafter, select one arbitrator from the National Panel of Commercial Arbitrators of the American Arbitration Association and those two (2) arbitrators shall jointly select a third arbitrator from the National Panel of Commercial Arbitrators of the American Arbitration Association, who shall serve as the presiding arbitrator and chairperson of such arbitration.

(iv) The Arbitrating Content Participants, on the one hand, and Licensor, on the other, shall, during the course of the arbitration, share equally the costs of arbitration set forth in Section 3.7(f)(vi)(F), provided, however, that the arbitrator(s) shall award the prevailing party or parties all of its or their costs and expenses, other than attorneys’ fees and expenses. In addition, if the arbitrator(s) find(s) that either Licensor or the Arbitrating Content Participants has or have advanced its or their position in bad faith or frivolously, he, she or they shall order such party or parties to reimburse the other party or parties for its or their reasonable attorneys’ fees and expenses.

(v) The arbitrator(s) is (are) empowered solely to determine (1) whether (A) except as provided in Section 3.7(b), the Arbitrating Content Participants have carried their burden of demonstrating that a DTLA Proposed Action is material and adverse or (B) in the event of a proposed change or a proposed method, as described in Section 3.7(b), whether Licensor has carried its burden as set forth in

Section 3.7(b), and (2) in the case of the circumstances described in either (A) or (B), whether or not Licensor may take a particular DTLA Proposed Action.

(vi) The arbitration specified in this Section 3.7(f) shall be conducted in accordance with the following provisions:

(A) The arbitration shall be conducted in Los Angeles, California, in accordance with the International Arbitration Rules of the American Arbitration Association. The language of the arbitration shall be English.

(B) The arbitrator(s) may conduct the arbitration in such manner as he, she or they shall deem appropriate, including the imposition of time limits that he, she or they consider(s) reasonable for each phase of the proceeding, but with due regard for the need to act, and make a final determination, in an expeditious manner. The arbitrator(s) shall set a schedule to endeavor to complete the arbitration within one (1) month.

(C) The arbitrator(s) shall permit and facilitate such limited discovery as he, she or they shall determine is reasonably necessary, taking into account the needs of the Arbitrating Parties and the desirability of making discovery as expeditious and cost-effective as possible, recognizing the need to discover relevant information and that only one party may have such information.

(D) The Arbitrating Parties and the arbitrator(s) shall treat the arbitration proceedings, any related discovery, documents and other evidence submitted to, and the decision of, the arbitrator(s) as Confidential Information. In addition, and as necessary, the arbitrator(s) may issue orders to protect the confidentiality of proprietary information, trade secrets and other sensitive information disclosed in discovery or otherwise during the arbitration.

(E) Any decision by the arbitrator(s) shall be final and binding on the Arbitrating Parties, except that whether the arbitrator(s) exceeded his, her or their authority, as specifically described in this Agreement, shall be fully reviewable by a court of competent jurisdiction. Judgment upon any award shall be entered in a court of competent jurisdiction.

(F) The arbitrator(s) shall be compensated at his, her or their hourly rates, determined at the time of appointment, for all time spent in connection with the arbitration, and shall be reimbursed for reasonable travel and other expenses. The arbitrator(s) shall determine all costs of the arbitration, including the arbitrator(s)' fees and expenses, the costs of expert advice and other assistance engaged by the arbitrator(s), the cost of a transcript and the costs of meeting and hearing facilities.

(g) If (i) no arbitration has been initiated with respect to the DTLA Proposed Action pursuant to Section 3.7(f); (ii) the arbitrator(s) determine(s) that the Arbitrating Content Participants have not carried their burden of demonstrating that the DTLA Proposed Action is material and adverse or (iii) the arbitrator(s) determine(s) that Licensor, in the event of a proposed change or a proposed method described in Section 3.7(b), carried its burden as set forth in Section 3.7(b), then Licensor may take the DTLA Proposed Action, and such action may be effective, according to its terms, thirty (30) days after receipt of Licensor's rejection pursuant to Section 3.7(c) or such final determination of the arbitrator(s). In the event that the inability to take the DTLA Proposed Action exposes Licensor or Founders to potential legal liabilities based on a claim of infringement which cannot practically be avoided except by taking the DTLA Proposed Action, and the Arbitrating Content Participants nonetheless continue to object to the DTLA Proposed Action, Licensor and the Arbitrating Content Participants shall discuss in good faith whether and in what circumstances Licensor can continue to license DTCP, taking into account considerations, including but not limited to (x) Arbitrating Content Participants' and other content owners' willingness and ability to indemnify Licensor, the Founders and their respective Affiliates with respect to such claim, (y) other costs and liabilities to Licensor or Founders, and (z) possible conversion of any licenses relating to DTCP to covenants not to assert intellectual property claims. If, after such discussions, the Arbitrating Content Participants and Licensor are unable to agree on the circumstances in which Licensor would be willing to continue to license DTCP, Licensor may terminate this Agreement and any other license agreement relating to DTCP.

3.8 Changes sought by Content Participants or Adopters. One elected representative of Fellow AV Content Participants that is a Major AV Content Participant and one elected representative of the Content Protection Implementers Forum representing the Information Technology industry and one elected representative of the Content Protection Implementers Forum representing the Consumer Electronics industry shall be appointed by Licensor to serve on the Founders Advisory Board ("FAB"). Founders shall meet with the FAB at least once per quarter. After consulting with other members of the FAB, each member of the FAB shall be entitled to request changes to the Form Adopter Agreement or the Specification by presenting a written proposal to each of the Founders setting forth the specific amendment sought. The Founders shall consider such requests in good faith.

### 3.9 Consensus Watermark Designation.

(a) Licensor shall designate as the Consensus Watermark, as that term is used in the Form Adopter Agreement, such watermark system that is approved by Licensor pursuant to this Section 3.9. In the event that either DVD Copy Control Association, Inc. ("DVD CCA") selects a watermark for playback control purposes or 4C Entity L.L.C. ("4C Entity") selects a watermark for copy control purposes (either such watermark, a "Proposed Watermark"), and such entity notifies Licensor of such selection and includes

in such notice technical information sufficient to demonstrate that the Proposed Watermark will not interfere with DTCP or the operation of any Licensed Products (the “Non-Interference Standard”), Licensor shall, within thirty (30) days of receiving such notice, notify all member companies of the MPAA that Licensor is considering evaluating the suitability of the Proposed Watermark as the Consensus Watermark and that Licensor seeks written responses from each such member, within fifteen (15) business days of the date of such notice from Licensor (the “Watermark Notice Period”), informing Licensor whether such member supports or objects to such designation by Licensor. In the event that Licensor (i) receives any written objection from any such member within the Watermark Notice Period with respect to such designation and (ii) does not receive at least three (3) notices from such members within the Watermark Notice Period supporting such designation, Licensor shall have no obligation to evaluate the Proposed Watermark or to designate the Proposed Watermark as the Consensus Watermark, and Content Participant shall have no right to object to Licensor’s declining (x) to conduct such an evaluation or (y) to designate the Proposed Watermark as the Consensus Watermark.

(b) In the event that Licensor (i) does not receive within the Watermark Notice Period any such written objection with respect to such designation from any member of the MPAA to whom Licensor sent a notice pursuant to Section 3.9(a) or (ii) receives at least three (3) written notices from such members within the Watermark Notice Period supporting such designation, it shall evaluate such watermark system to determine whether the Proposed Watermark meets the Non-Interference Standard. In the event that Licensor conducts such an evaluation and determines that the Proposed Watermark meets the Non-Interference Standard, it shall designate the Proposed Watermark as the Consensus Watermark. In the event that Licensor conducts such an evaluation and determines that the Proposed Watermark does not meet the Non-Interference Standard, it may decline to designate the Proposed Watermark as the Consensus Watermark. Licensor shall notify Content Participant of whether it will designate, or decline to designate, the Proposed Watermark as the Consensus Watermark (x) in the case that DVD CCA or 4C Entity selects one of the Presently Known Watermark Technologies as the Proposed Watermark, within thirty (30) days after the conclusion of the Watermark Notice Period or (y) in the case that DVD CCA or 4C Entity selects as the Proposed Watermark any watermark technology other than a Presently Known Watermark Technology, including but not limited to any upgrade to a Presently Known Watermark Technology, ninety (90) days after the conclusion of the Watermark Notice Period.

(c) In the event that Licensor is obligated to conduct an evaluation of the Consensus Watermark pursuant to Section 3.9(b) and notifies Content Participant, pursuant to Section 3.9(b), that it declines to designate the Proposed Watermark as the Consensus Watermark, then for so long as Content Participant is an Eligible AV Content Participant and believes in good faith that the Proposed Watermark meets the Non-

Interference Standard, it shall have the right, either on its own or with one or more Fellow AV Content Participants that are each an Eligible AV Content Participant under its AV Content Participant Agreement, to file a written objection to Licensor's decision not to designate the Proposed Watermark as the Consensus Watermark. Any such objection shall set forth with specificity the basis for such good faith belief by Content Participant that the Proposed Watermark meets the Non-Interference Standard and shall be delivered to Licensor no later than fifteen (15) business days after the date of service of notice by Licensor pursuant to Section 3.9(b) at the address specified in the notice provisions of this Agreement. In the event Licensor has served such notice to Content Participant by mail, three (3) days shall be added to the prescribed period for filing an objection. Licensor agrees to consider any such objection in good faith. If Licensor rejects such objection, it shall provide prompt written notice thereof to Content Participant and any Fellow AV Content Participants that filed a written objection explaining the reasons for such rejection.

(d) If (i) Content Participant is a Major AV Content Participant and has filed a written objection pursuant to Section 3.9(c), (ii) Content Participant is joined by other Fellow AV Content Participants that are Major AV Content Participants and also are Eligible AV Content Participants under each of their AV Content Participant Agreements, which, together with Content Participant, constitute a majority of such Major AV Content Participants that are also Eligible AV Content Participants, and (iii) such majority continues to believe in good faith that the Proposed Watermark meets the Non-Interference Standard, notwithstanding communication with Licensor pursuant to Section 3.9(c), then Content Participant and such Fellow AV Content Participants shall have the right, within thirty (30) days from receipt of Licensor's rejection of such objection pursuant to Section 3.9(c), to initiate an arbitration to determine whether the Proposed Watermark meets the Non-Interference Standard. In any such arbitration, Licensor shall have the burden of demonstrating, by a preponderance of the evidence, that the Proposed Watermark does not meet the Non-Interference Standard. Such arbitration shall be subject to the terms and conditions set forth in Sections 3.7(f) (iii)-(iv) and (vi) (except that "Arbitrating Content Participants" shall mean Content Participant and such Fellow AV Content Participants that initiate an arbitration pursuant to this Section 3.9(d)), and this Section 3.9(d). The arbitrator(s) shall be empowered solely to determine whether Licensor has carried its burden of demonstrating that the Proposed Watermark does not meet the Non-Interference Standard. In the event that the arbitrator(s) determine(s) that Licensor has not carried such burden, Licensor shall designate the Proposed Watermark as the Consensus Watermark. If the arbitrator(s) determine(s) that Licensor has carried such burden, Licensor shall have no obligation to designate the Proposed Watermark as the Consensus Watermark.

(e) Except where Licensor is required to designate the Proposed Watermark as the Consensus Watermark pursuant to Section 3.9(d), any designation by Licensor of

the Consensus Watermark shall be subject to all of the terms and conditions of Section 3.7.

(f) Notwithstanding anything in this Section 3.9 to the contrary, if during the two (2)-year period immediately preceding the fourth anniversary of the date of Licensor's designation of the Consensus Watermark, the Consensus Watermark has not been implemented by Major AV Content Participants in more than thirty-three percent (33%) of DVD discs of new theatrical motion pictures produced for DVD release by such Major AV Content Participants in the United States of America and Canada during such period, Licensor may, upon six (6) months' notice to Content Participant, amend Section 6.2 of Part 1 of Exhibit B to the Form Adopter Agreement and the comparable provisions of any Adopter Agreement, and rescind such designation of the Consensus Watermark. Any such amendments and rescissions shall not be subject to the provisions of Section 3.7.

3.10 New Circumstances. The Parties acknowledge that the Robustness Rules impose certain obligation on Adopters in the event of New Circumstances (as defined in the Robustness Rules). Content Participant may notify Licensor of information regarding any circumstances that Content Participant believes in good faith constitute New Circumstances with respect to one or more Adopters, and Licensor shall make such information available to the relevant Adopters.

#### 4. ADMINISTRATION FEES.

4.1 Administration Fee. Within thirty (30) days of the Effective Date and of each anniversary of the Effective Date, Content Participant shall pay Licensor a nonrefundable sum in the amount set out in Exhibit B (the "Administration Fee"). As of the first anniversary of the Effective Date, and on an annual basis thereafter, Licensor shall have the right, upon at least thirty (30) days' notice to Content Participant, to adjust the Administration Fee on a reasonable and nondiscriminatory basis, provided that any increase in such fee shall not exceed an amount commensurate with any increase in Licensor's costs (including but not limited to the cost of inflation). Unless Content Participant shall have exercised its right to terminate this Agreement pursuant to Section 8.1.1, Content Participant shall pay such Administration Fee. Content Participant shall not be entitled to any refund of Administration Fees for any reason.

#### 5. ENCODING RULES.

##### 5.1 Encoding Rules.

(a) Content Participant shall not encode, or direct to be encoded, using DTCP, Commercial Audiovisual Content so as to prevent or limit copying thereof in Licensed Products except as follows:

- (i) to prevent or limit copying of Prerecorded Media, Video on Demand, Pay-Per-View, Subscription-on-Demand, and Undefined Business Models that are Comparable to any of the foregoing; and
  - (ii) to prevent or limit copying, other than such first generation of copies as are permitted under the Compliance Rules, of Pay Television Transmissions, Non-Premium Subscription Television, Free Conditional Access Delivery, and Undefined Business Models that are Comparable to any of the foregoing.
- (b) Content Participant shall not encode, or direct to be encoded, using DTCP, Commercial Audiovisual Content so as to prevent or limit the retransmission thereof except as follows:
- (i) Content Participant may encode, or direct to be encoded, using DTCP, Commercial Audiovisual Content pursuant to Section 5.1(a);
  - (ii) Content Participant may encode, or direct to be encoded, using EPN, any Defined Business Models other than Other EPN Eligible Broadcast Television and any Undefined Business Models that are Comparable to such Defined Business Models, in each case in accordance with the terms of paragraphs (A)-(E) of this Section 5.1(b)(ii):
    - (A) EMI shall be set to Mode B encryption in accordance with Chapter 6 of the Specification.
    - (B) EPN shall be set to be asserted in accordance with Chapter 6 and Appendix B of the Specification.
    - (C) EmCCI shall be encoded as “Copy Freely” in accordance with the Specification.
    - (D) CGMS-A, if present, shall be encoded as “Copy Freely” in accordance with the CGMS-A specifications contained in IEC 61880 (for inclusion on Line 20) or in CEA-608-B (for inclusion on Line 21) or in CEA-805-A (for inclusion on Line 41), as applicable.
    - (E) APS trigger bits, if present, shall be encoded so as not to trigger the application of the Automatic Gain Control and Colorstripe copy control system, in accordance with the document entitled “Specification of the Macrovision Copy Protection Process for DVD Products, Revision 7.1.D1, September 30, 1999.”
  - (iii) Content Participant may, solely as expressly authorized under Section 5.3, encode, or direct to be encoded, using EPN, Other EPN Eligible Broadcast Television



(iv) and Undefined Business Models that are Comparable to Other EPN Eligible Broadcast Television.

(c) For purposes of this Agreement, to “encode, or direct to be encoded, using DTCP” means to cause or direct the inclusion of particular copy control information in the DTCP Encryption Mode Indicator (“DTCP EMI”), or the DTCP Embedded Copy Control Information (“EmCCI”) data packet of a DTCP encrypted data stream, in each case as such DTCP EMI and EmCCI are described in the Specification, or in such other location so as to cause DTCP (including, for avoidance of doubt, EPN and the Image Constraint Token) to be used to protect the Commercial Audiovisual Content carried in such data stream. For avoidance of doubt, “to encode, or direct to be encoded, using the Image Constraint Token” (as defined in Section 5.1(d)) and “to encode, or direct to be encoded, using EPN” are included in the definition of “to encode, or direct to be encoded, using DTCP.”

(d) Content Participant shall not encode, or direct to be encoded, using the Image Constraint Token, Commercial Audiovisual Content so as to prevent or limit any Sink Device from outputting such content in High Definition Analog Form or any unprotected digital equivalent thereof, except with respect to Prerecorded Media, Pay Television Transmissions, Video-on-Demand, Subscription-on-Demand, Pay-Per-View, an Undefined Business Model that is Comparable to any of the foregoing, or any other Conditional Access Delivery of a Program that had a theatrical release, or was released direct-to-video, and is transmitted or delivered uninterrupted by Commercial Advertising Messages. Notwithstanding the foregoing, Content Participant shall not so encode, or direct to be encoded, using the Image Constraint Token, any Commercial Audiovisual Content that Content Participant causes or permits to be transmitted or delivered to a device that incorporates a Source Function if Content Participant permits such Commercial Audiovisual Content to be substantially simultaneously output from such device in an unprotected High Definition Analog Form or any unprotected digital equivalent (unless (a) via a digital transmission technology which is licensed solely for transmission for display purposes (e.g., DVI) or (b) via any computer video output referenced in Section 4.3.3 of Part 1 of Exhibit B to the Form Adopter Agreement during the time period in which Licensed Products incorporated into Computer Products are permitted under such section to pass to such output Decrypted DT Data other than as a Constrained Image via such output) and such content, when received by such device, is not DT Data. For purposes of this Section 5.1, to “encode, or direct to be encoded, using the Image Constraint Token” means to direct or cause the setting of the Image Constraint Token so as to cause a Sink Device that outputs Decrypted DT Data to a High Definition Analog Output or an unprotected digital equivalent thereof to so output such Decrypted DT Data as a Constrained Image. Capitalized terms used in this Section 5.1(d) and not otherwise defined in this Agreement shall have the meaning given to such terms in the Compliance Rules to the Form Adopter Agreement.

(e) With respect to any Commercial Audiovisual Content delivered or transmitted in the form of Video-on-Demand, Pay-Per-View or Subscription-on-Demand, or an Undefined Business Model that is Comparable to any of the foregoing, in each case that Content Participant encodes or directs to be encoded, using DTCP, so as to prevent or limit a recipient authorized to receive such delivery or transmission from making a such first generation of copies as are permitted under the Compliance Rules, Content Participant shall encode, or direct to be encoded, such content so as to cause the Retention State Indicator associated with such content to be set so as to permit Sink Devices to retain such content for at least ninety (90) minutes. Notwithstanding the foregoing, if the amount of time that such content may be retained in any Source Device is determined pursuant to rules, standards or obligations that were developed under an open-standards process, Content Participant shall not encode, or direct to be encoded, such content so as to cause the Retention State Indicator associated with such content to be set so as to prevent a Sink Device from retaining such content for such period of time specified in the Specification that is closest to, but not exceeding, the period of time that such Source Device is permitted to retain such content.

(f) Without limiting the terms of Section 5.2, in markets outside the United States, and where it is not clear whether a transmission and/or delivery of Commercial Audiovisual Content owned or licensed by Content Participant is Conditional Access Delivery or falls within one of the Defined Business Models, Content Participant and Licensor shall cooperate in good faith to determine the appropriate Encoding Rules that should apply to such transmission and/or delivery so as to apply the intention and spirit of the Encoding Rules thereto.

(g) The provisions of this Agreement shall not be taken or offered by any party as a waiver or license of any copyright interest or an admission of the existence of infringement (or not) of a copyright interest, but represents a technical accommodation with respect to DTCP. Without limiting any term or condition of this Agreement, this Agreement shall not be construed to limit Content Participant's right to seek to protect Commercial Audiovisual Content through means other than DTCP, and the Encoding Rules apply only with respect to the application of DTCP.

## 5.2 Encoding Rules for Different Business Models and Review Proceeding.

(a) If Content Participant desires to encode or direct to be encoded, using DTCP, Commercial Audiovisual Content in accordance with any business model for the delivery or transmission of such Commercial Audiovisual Content that Content Participant believes does not fall within the definitions of any Defined Business Model (an "Undefined Business Model"), then:

- (i) Content Participant, in encoding, or directing to be encoded, using DTCP, such Commercial Audiovisual Content, shall comply with the specific Encoding Rules, permitted by Section 5.1, that are applicable to the Defined Business Model that most closely approximates Content Participant's Undefined Business Model; and
- (ii) Content Participant shall make a good faith attempt to notify Licensor by the date on which Content Participant makes a public announcement of its determination to implement such business model.

In any event, Content Participant shall give such notice as soon as practicable after such public announcement and by no later than the date on which such Undefined Business Model is actually implemented; provided that the failure of Content Participant to provide such notice shall not be deemed to be a breach of this Agreement, unless such failure is a result of Content Participant not making a good faith attempt to comply with this Section 5.2(a). In all cases, a press release issued by Content Participant announcing such Undefined Business Model shall suffice to constitute the notice required by this Section 5.2(a).

(b) Any notice provided under Section 5.2(a), other than a press release, shall set forth the Encoding Rules adopted or proposed to be adopted by Content Participant and which Defined Business Model Content Participant believes most closely approximates Content Participant's Undefined Business Model. If the notice provided under Section 5.2(a) is a press release and if such press release does not specify the Encoding Rules adopted by Content Participant for such business model, Content Participant shall, as soon as practicable but, in any event, no later than ten (10) business days after the publication of such press release, provide Licensor with a second notice that specifies the Encoding Rules adopted or proposed to be adopted by Content Participant for such business model; provided that the failure of Content Participant to provide such notice shall not be deemed to be a breach of this Agreement, unless such failure is a result of Content Participant not making a good faith attempt to comply with this Section 5.2(b).

(c) For purposes of clarification, a temporary, bona fide trial of a proposed Undefined Business Model shall not be deemed to be a business model as to which notice is required to be given under Section 5.2(a), nor shall it otherwise be deemed to be a breach of any other provision of this Agreement.

(d) Either Party, on its own initiative or after Licensor receives the notice sent pursuant to Section 5.2(a), may notify the other that it desires to meet in order to determine whether Content Participant has complied with Section 5.2(a)(i). Promptly, following such other Party's receipt of such notice requesting such meeting, the Parties shall meet in good faith to attempt to make such determination. Licensor shall keep

confidential, and shall not disclose to any third party (other than to the Founders and its and their respective agents and representatives, which agents and representatives have agreed in writing, or are otherwise bound by a fiduciary or legal duty, to keep such information confidential) any proprietary business information disclosed by Content Participant during such meeting that Content Participant designates in writing as “Confidential,” provided, however, that Licensor shall not be precluded from disclosing such information in any arbitration initiated pursuant to Section 5.2(e) or as may otherwise be necessary to enforce its rights under this Agreement, and provided further that such restriction shall not apply if such information becomes generally known to the public or has been disclosed to Licensor by a third party not bound by obligations of confidentiality.

(e) If, after the meetings required by Section 5.2(d), Licensor believes that Content Participant is proposing to encode or direct to be encoded, or has encoded or directed to be encoded, using DTCP, Commercial Audiovisual Content, in a manner that would not comply with the specific Encoding Rules, permitted by Section 5.1, that are applicable to the Defined Business Model that most closely approximates Content Participant’s Undefined Business Model, Licensor’s sole remedy shall be to initiate an arbitration in accordance with Sections 3.7(f)(iii), 3.7(f)(vi) (except that the last sentence of Section 3.7(f)(vi)(B) shall not apply to such arbitration, and “Arbitrating Content Participants” shall be deemed to mean Content Participant) and this Section 5.2. In such arbitration, Content Participant shall have the burden of demonstrating, based on the preponderance of evidence, that it is or will be encoding such Commercial Audiovisual Content in compliance with Section 5.2(a)(i). In any such arbitration, the arbitrator(s) is (are) empowered solely to determine whether Content Participant has carried such burden, and if it has not, which specific Encoding Rules should apply to such Commercial Audiovisual Content a based upon the Defined Business Model that most closely approximates Content Participant’s Undefined Business Model. In no event is any arbitrator, or any court considering mandating arbitration or the enforcement of any decision of any arbitrator, empowered to award any monetary amount or other relief, except as specifically provided in Section 5.2(f).

(f) Each of the parties to the arbitration initiated pursuant to Section 5.2(e) shall bear its own costs and expenses in such arbitration, and otherwise shall share equally the costs of such arbitration. Notwithstanding the immediate preceding sentence and the last sentence of Section 5.2(e), if the arbitrator(s) find(s) that (x) Content Participant’s selection of the Encoding Rules for an Undefined Business Model, based on the specific Encoding Rules that are applicable to the Defined Business Model that most closely approximates such Undefined Business Model, was not bona fide, or was capricious or frivolous, or (y) Licensor’s initiation of an arbitration pursuant to Section 5.2(e) was not bona fide, or was capricious or frivolous, then the arbitrator(s) is (are) empowered to award Licensor (in the case of the finding set forth in clause (x)) or Content Participant (in the case of the finding set forth in clause (y)), such Party’s costs

and expenses, and reasonable outside legal fees and expenses, incurred in such arbitration.

(g) The Parties intend that the issue of which specific Encoding Rules should apply to the transmission or other delivery of Commercial Audiovisual Content pursuant to an Undefined Business Model should be resolved expeditiously. If the date on which Content Participant notifies Licensor in accordance with Section 5.2(a) is sixty (60) or fewer days prior to Content Participant's commencement of any such transmission or other delivery, then the Parties shall conduct any meetings, or participate in any arbitration initiated pursuant to Section 5.2(e), on an expedited basis. The Parties shall take all reasonable efforts to have any such arbitration concluded as expeditiously as possible. Without limiting the foregoing, the Parties (x) agree to submit statements providing support for their positions, all supporting documents and witness statements from any witnesses on which they intend to rely within ten (10) business days after the arbitrator is selected, (y) shall agree on a date for a hearing that is no later than ten (10) business days after the date of such submission and (z) shall request the arbitrator(s) to render his, her or their determination within ten (10) business days after such hearing.

(h) If, in accordance with the good faith meetings required by Section 5.2(d), the Parties agree as to which specific Encoding Rules should apply to such Commercial Audiovisual Content, or if, in an arbitration conducted pursuant to Section 5.2(e), the arbitrator determines that Content Participant does not or will not comply with the specific Encoding Rules, permitted by Section 5.1, that are applicable to the Defined Business Model that most closely approximates Content Participant's Undefined Business Model, then Content Participant shall implement such agreement or so comply with such Encoding Rules as soon as practicable thereafter.

5.3 Protection Against Internet Retransmission of Content for Which Copy Control is Not Asserted. In the event that Content Participant executes the "EPN Addendum" attached hereto as Exhibit H and delivers a copy of such addendum, duly executed by an authorized representative of Content Participant, to Licensor, (a) Content Participant shall comply with all of the terms and conditions of such EPN Addendum and (b) Content Participant may encode, or direct to be encoded, using EPN, solely in accordance with and pursuant to the terms and conditions of such EPN Addendum and this Section 5.3, any service, Program, or schedule or group of Programs, delivered or transmitted in the form of Other EPN Eligible Broadcast Television, provided, however, that Content Participant may not so encode or direct to be encoded, using EPN, any Other EPN Eligible Broadcast Television prior to the Effective Addendum Date (as defined in such EPN Addendum) or after the termination of such EPN Addendum.

## 6. REVOCATION.

6.1 Generally. The Specification includes means by which certain devices' Device Certificates may be invalidated, rendering such devices unable to exchange data via DTCP with Licensed Products (generally, "Revocation" or "Revoked").

6.2 Obligation to Carry Revocation Information. Licensor shall notify Content Participant in the event that Licensor plans to Revoke or rescind a Revocation of a Device Certificate and deliver or cause to be delivered to Content Participant Revocation Information for use in connection with such Revocation or rescission of Revocation. Content Participant shall make commercially reasonable efforts to include Revocation Information in its distributed, transmitted or delivered Commercial Audiovisual Content that is distributed, transmitted or delivered more than thirty (30) days after receiving such notice from Licensor, provided that in no case shall Content Participant be required to (a) remaster any of Content Participant's Commercial Audiovisual Content, or (b) include Revocation Information in previously manufactured copies of Content Participant's Commercial Audiovisual Content. Nothing herein shall require Content Participant to impose any such obligation to carry Revocation Information on its licensees.

6.3 Information Relating to Revocation. If either Licensor or senior officials of Founders that have responsibility for Licensor's activities or DTCP have knowledge of facts or other information relating to any particular Device Certificate or Device Key that would satisfy one or more of the Revocation Criteria (defined in Section 6.4(b)), Licensor shall, consistent with the necessity to maintain the confidentiality of such facts or other information, inform Content Participant of such facts or other information. Content Participant may seek Revocation in accordance with Section 6.4.

## 6.4 Content Participant Request for Revocation.

(a) For so long as Content Participant is an Eligible AV Content Participant, it shall have the right, either on its own or with one or more Fellow AV Content Participants in which each member of such group is an Eligible AV Content Participant under its respective AV Content Participant Agreement (including the AV Content Participant User Group), to seek Revocation by providing proof to Licensor in a sworn affidavit (the "CP Affidavit") of any of the facts relating to any particular Device Certificate that would satisfy one or more of the Revocation Criteria (defined below) and to initiate an arbitration proceeding (Content Participant and such other Fellow AV Content Participants, if any, that initiate such arbitration, for the purposes of this Section 6.4, the "Arbitrating Content Participants"), in accordance with Section 3.7(f)(vi) (except that the terms "Arbitrating Content Participants" and "Arbitrating Parties" shall have the meanings given in this Section 6.4(a)) and this Section 6.4(a), provided, however,

Content Participant may not initiate an arbitration to seek Revocation of the same Device Certificate based on the same set of facts at issue in any prior arbitration initiated by a Fellow AV Content Participant. The CP Affidavit shall be sufficiently detailed that Licensors can determine, solely on the basis of such affidavit whether the facts averred satisfy one or more of the Revocation Criteria:

- (i) Upon receipt of the CP Affidavit, Licensors shall review it in light of the Revocation Criteria and, promptly determine whether the facts averred in the CP Affidavit satisfy one or more of the Revocation Criteria.
- (ii) Licensors shall promptly provide any Adopter to whom Licensors or its designee had issued a Device Certificate for which Revocation has been requested by Content Participant with notice of such requested Revocation and a copy of the CP Affidavit. If such Adopter notifies Licensors in writing that such Adopter consents to such Revocation, Licensors shall take steps to Revoke the applicable Device Certificate by promptly delivering or causing to be delivered to Content Participant relevant Revocation Information.
- (iii) If the Adopter objects to the Revocation, or does not consent to such Revocation, within fifteen (15) days of receipt of Licensors' notice pursuant to Section 6.4(a)(ii), Licensors shall so notify Content Participant. Content Participant may initiate an arbitration proceeding to resolve the matter, in accordance with the following procedures, within thirty (30) days after receipt of such notice from Licensors.
- (iv) The parties to the arbitration shall be the Arbitrating Content Participants, the affected Adopter(s), if any, that objected to the Revocation pursuant to Section 6.4(a)(iii) and/or any designee(s) that such Adopter(s) may designate (such Adopters and designees, collectively, the "Affected Adopters") and/or, at its election, Licensors (collectively, the "Arbitrating Parties"). The Arbitrating Content Participants shall bear the burden of proof in demonstrating, by a preponderance of the evidence, that one or more of the Revocation Criteria have been satisfied.
- (v) There shall be a sole arbitrator, who shall be selected by the Arbitrating Parties from the National Panel of Commercial Arbitrators of the American Arbitration Association within fourteen (14) days of the initiation of arbitration; provided, however, that in the event the Arbitrating Parties cannot agree on a sole arbitrator within such fourteen (14)-day period, the Arbitrating Content Participants, on the one hand, and the other Arbitrating Parties, on the other hand, shall each, promptly thereafter, select one arbitrator from the National Panel of Commercial Arbitrators of the American Arbitration Association and those two arbitrators shall jointly select a third arbitrator from the National Panel of

Commercial Arbitrators of the American Arbitration Association, who shall serve as the presiding arbitrator and chairperson of such arbitration.

(vi) The arbitrator(s) is (are) empowered solely to determine (a) whether one or more of the Revocation Criteria have been satisfied and (b) if so, only in the circumstance set forth in clause (x) of this Section 6.4(a)(vi), whether Revocation is warranted. Any such determination by the arbitrator(s) shall be final and binding on the parties to the arbitration, and on Licensor, if it is not a party to the arbitration, except that whether the arbitrator(s) exceeded his her, or their, authority as specifically described in this Section 6.4(a)(vi), shall be fully reviewable by a court of competent jurisdiction. In any such arbitration, the Affected Adopter(s), if any, may introduce evidence solely to support the position that one or more of the Revocation Criteria have not been satisfied. In the event that the Arbitrator(s) determine(s) that the Revocation Criteria set forth in Section 6.4(b)(ii) have been satisfied, (x) if Licensor is a party to the arbitration and objects to Revocation, it shall have the burden of demonstrating, by a preponderance of the evidence, that Revocation is not warranted, and if Licensor fails to meet such burden, Revocation shall be deemed warranted and (y) if Licensor is not a party to the arbitration, Revocation shall be deemed to be warranted. In the event that the arbitrator(s) determine(s) that the Revocation Criteria set forth in Section 6.4(b)(i) have been satisfied, Revocation shall be deemed warranted.

(vii) All costs and fees shall be shared equally as between the Arbitrating Content Participants, on the one hand, and the Affected Adopters, if any, that participate in the arbitration, on the other, provided, however, the arbitrator(s) may otherwise apportion such costs and fees among such Arbitrating Content Participants and Affected Adopters, if any, as the arbitrator(s) may determine.

(viii) The prevailing party in such arbitration shall provide to Licensor a copy of the arbitrator(s) decision. If, pursuant to this Section 6.4(a), Revocation is warranted, Licensor shall, promptly after it receives such decision, deliver or cause to be delivered to Content Participant relevant Revocation Information.

(b) In the event that Content Participant seeks Revocation (unilaterally or with one or more Fellow AV Content Participants) in accordance with Section 6.4(a), the objective Revocation criteria set out in either Section 6.4(b)(i) or Section 6.4(b)(ii) (the “Revocation Criteria”) must be satisfied.

(i) a Device Key and corresponding Device Certificate have been cloned such that the same Device Key and corresponding Device Certificate are found in more than one device or product; or



(ii) a Device Certificate and/or Device Key has been lost, stolen, intercepted or otherwise misdirected or made public or disclosed in violation of an Adopter Agreement.

## 7. CONFIDENTIALITY.

7.1 Treatment. Content Participant shall comply with the terms of Exhibit C (the “Confidentiality Agreement”). The materials marked “Confidential” shall be deemed Confidential Information under the Confidentiality Agreement, and the materials designated by Licensor as “Highly Confidential” shall be deemed Highly Confidential Information under the Highly Confidential NDA.

7.2 Export. Content Participant and Licensor shall comply with all applicable rules and regulations of the United States, Japan and other countries and jurisdictions relating to the export or re-export of commodities, software and technical data insofar as they relate to the activities under this Agreement. Each Party agrees that commodities, software and technical data provided under this Agreement are subject to restrictions under the export control laws and regulations of the United States, Japan and other countries and jurisdictions, as applicable, including but not limited to the U.S. Export Administration Act and the U.S. Export Administration Regulations and the Japanese Foreign Exchange and Foreign Trade Law, as such may be amended from time to time, and shall obtain any approval required of such Party under such laws and regulations whenever it is necessary for such export or re-export.

## 8. TERM/TERMINATION.

8.1 Termination. This Agreement shall be effective upon the Effective Date and shall remain in effect until terminated in accordance with the terms of this Section 8.

8.1.1 Termination by Content Participant. Content Participant shall have the right to terminate this Agreement at any time on or after the first anniversary of the Effective Date upon ninety (90) days prior notice to Licensor, or at any earlier time upon reasonable notice to Licensor in the event a third-party claim is made that may subject Content Participant to legal liability in connection with DTCP or this Agreement.

8.1.2 Breach. Either Party shall have the right to terminate this Agreement upon notice to the other Party in the event of a material breach by such other Party, which breach remains uncured after, or is not capable of cure within, thirty (30) days of the non-breaching Party providing notice of such breach to the breaching Party.

8.2 Effect of Termination. Within thirty (30) days after termination of this Agreement, Content Participant shall, at the direction of Licensor, either: (i) return all Proprietary Information to Licensor; or (ii) destroy all Proprietary Information in its

possession, retaining no copies thereof, and certify such destruction in writing to Licensor. In no event shall Content Participant have any liability, after the termination of this Agreement, for any effects, after such termination, of Content Participant having encoded, or directed to be encoded, using DTCP, in accordance with the terms of this Agreement, its Commercial Audiovisual Content prior to such termination, including but not limited to in masters or other copies of such content made before such termination.

8.3 Survival. The terms of Sections 2.2 , 7 , 8.2 , 9.4, 10 , 11 (with respect to any claims arising prior to termination), 12 and this Section 8.3 shall survive any termination of this Agreement.

9. REPRESENTATIONS OF CONTENT PARTICIPANT AND LICENSOR.

9.1 Eligibility. Content Participant represents that it is causing or permitting distribution or transmission, or that it intends to cause or permit distribution or transmission of, Commercial Audiovisual Content with the expectation that such Commercial Audiovisual Content will be transmitted or received by Licensed Products.

9.2 Compliance With Laws. Content Participant and Licensor each represent and warrant that they shall comply with all applicable governmental regulations, laws and orders pertaining to DTCP, including but not limited to with respect to export requirements pursuant to Section 7.2.

9.3 Controlled Entities. Content Participant represents and warrants that it has, or will have, the authority to bind its Affiliates to the terms of this Agreement.

9.4 Representations by Licensor and Founders.

(a) Licensor represents that as of November 4, 2003, the President of Licensor has not received any written notice or claim, threatened or pending, from a third party that the use of DTCP in accordance with the terms of this Agreement infringes any third party's patent rights or that the licensing of Licensor's or any Founder's Necessary Claim would require the payment of royalties by Licensor or Founders to unaffiliated third parties.

(b) The Parties acknowledge that Exhibit D sets forth certain representations from each of the Founders with respect to the receipt of written notices or claims from a third party that the use of DTCP in accordance with the terms of this Agreement infringes a third party's patent rights or that the licensing of any of such Founder's Necessary Claims would require the payment of royalties by such Founder to unaffiliated third parties.

(c) The Parties agree that in the event that a court of competent jurisdiction renders a final, non-appealable, judgment against Licensor for breach of the representations set forth in this Section 9.4 or Exhibit D, the liability of Licensor to Content Participant in connection with such breach shall in no event exceed the fees paid by Content Participant to Licensor hereunder in the immediately preceding two (2)-year period.

#### 10. DISCLAIMER AND LIMITATION OF LIABILITY.

The terms of this Section 10 limit the ability of Content Participant to recover any damages from Licensor or the Founders in excess of fees actually paid to Licensor by Content Participant; provided that such limitation does not apply with respect to any third-party beneficiary claim brought by Content Participant against a Founder in its role as an Adopter pursuant to such Founder's Adopter Agreement. Such terms are an essential part of the bargain, without which Licensor would not be willing to enter into this Agreement.

10.1 Disclaimer. ALL INFORMATION, MATERIALS, REVOCATION INFORMATION, DEVICE KEYS AND DEVICE CERTIFICATES ARE PROVIDED "AS IS." LICENSOR AND THE FOUNDERS MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EXPRESSLY DISCLAIM IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY EQUIVALENTS UNDER THE LAWS OF ANY JURISDICTION THAT MIGHT ARISE FROM ANY ACTIVITIES OR INFORMATION DISCLOSURES RELATING TO THIS AGREEMENT, ANY ADOPTER AGREEMENT OR ANY OTHER ACTIVITY OF LICENSOR OR THE FOUNDERS. WITHOUT LIMITING THE FOREGOING, LICENSOR AND THE FOUNDERS DO NOT REPRESENT OR WARRANT THAT DTCP WILL PROTECT COMMERCIAL AUDIOVISUAL CONTENT FROM UNAUTHORIZED INTERCEPTION OR THAT DTCP IS IMMUNE TO HACKING, CODE-BREAKING, PIRACY OR OTHER EFFORTS TO CIRCUMVENT SUCH SYSTEM. LICENSOR AND THE FOUNDERS FURTHER DISCLAIM ANY WARRANTY THAT ANY IMPLEMENTATION OF THE SPECIFICATION, IN WHOLE OR IN PART, WILL BE FREE FROM INFRINGEMENT OF ANY THIRD PARTY'S INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS.

10.2 Limitation of Liability. NEITHER LICENSOR NOR THE FOUNDERS NOR ANY OF THEIR DIRECTORS, OFFICERS, EQUIVALENT CORPORATE OFFICIALS, MEMBERS, EMPLOYEES, AGENTS OR REPRESENTATIVES ACTING IN THEIR CAPACITIES AS SUCH (COLLECTIVELY, THE "AFFECTED PARTIES") SHALL BE LIABLE TO CONTENT PARTICIPANT FOR ANY DIRECT, INDIRECT, INCIDENTAL,

CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF ANY CAUSE OF ACTION RELATING TO THIS AGREEMENT, OR BASED ON ANY PERSON'S OR ENTITY'S USE OF, OR MAKING, USING, SELLING OR IMPORTING ANY PRODUCTS THAT IMPLEMENT, DTCP, WHETHER UNDER THEORY OF CONTRACT, TORT, INDEMNITY, PRODUCT LIABILITY OR OTHERWISE. TO THE EXTENT THAT ANY COURT OF COMPETENT JURISDICTION RENDERS JUDGMENT AGAINST ANY OF THE AFFECTED PARTIES NOTWITHSTANDING THE ABOVE LIMITATION, THE AFFECTED PARTIES' AGGREGATE LIABILITY TO CONTENT PARTICIPANT IN CONNECTION WITH THIS AGREEMENT SHALL IN NO EVENT EXCEED THE ANNUAL ADMINISTRATION FEE PAID TO LICENSOR BY CONTENT PARTICIPANT UNDER THIS AGREEMENT; PROVIDED THAT THE LIMITATION OF LIABILITY SET OUT IN THIS PARAGRAPH 10.2 DOES NOT APPLY WITH RESPECT TO ANY THIRD-PARTY BENEFICIARY CLAIM BROUGHT BY CONTENT PARTICIPANT AGAINST A FOUNDER IN ITS ROLE AS AN ADOPTER PURSUANT TO SUCH FOUNDER'S ADOPTER AGREEMENT.

## 11. REMEDIES.

11.1 Equitable Relief. Content Participant and Licensor agree and acknowledge that due to the unique nature of certain provisions hereof and the lasting effect of and harm from a breach of such provisions, if Content Participant breaches its obligations hereunder, money damages alone may not adequately compensate an injured party, and that injury to such party may be irreparable, and that specific performance or other temporary, preliminary, or permanent injunctive or equitable relief is an appropriate remedy to prevent further or threatened breaches of such obligations. Licensor's remedies hereunder for any breach by Content Participant of this Agreement shall be limited to such injunctive or equitable relief, except (i) in the event that Content Participant willfully breaches, or engages in a pattern or practice of breaching, its obligations hereunder, it shall be liable for Licensor's attorneys' fees and expenses incurred in connection with any enforcement action brought by Licensor in which Licensor is the prevailing party and (ii) as provided in Exhibit F. Exercise of Licensor's rights, or any Adopter's third-party-beneficiary rights, under this Section 11 shall not constitute an election against any statutory or other extra-contractual remedy against Content Participant.

## 11.2 Adopter Third-Party-Beneficiary Rights.

(a) The Parties acknowledge and agree that the compliance of Content Participant with the terms of this Agreement, and the compliance of the other Fellow AV Content Participants with their respective AV Content Participant Agreements, is essential to (including as to the integrity and security of) DTCP. As part of the consideration of the rights and licenses granted to Content Participant hereunder, Content Participant hereby confers a third-party-beneficiary right upon each Adopter that designs or manufactures Licensed Products that receive or transmit Commercial Audiovisual Content for so long as such Adopter is (i) not willfully in material breach of the terms and conditions of its Adopter Agreement and (ii) not otherwise in material breach of any term or condition of its Adopter Agreement, which breach has not been cured, or is not capable of cure, within thirty (30) days of such Adopter's receipt of notice thereof by Licensor or any Fellow AV Content Participant (each, an "Adopter Beneficiary") in order to enforce those obligations of Content Participant under Section 5. The remedies hereunder for any such Adopter Beneficiary that initiates or institutes a claim or action to enforce the terms of Section 5 (an "Adopter Beneficiary Claim") shall, notwithstanding any provision of any Adopter Agreement executed prior to the date hereof, be limited to seeking injunctive relief, except where Content Participant has willfully breached, or engaged in a pattern or practice of breaching, its obligations under Section 5, as to which breach(s) attorneys' fees and costs shall be awarded to each Adopter Beneficiary in connection with each Adopter Beneficiary Claim in which such Adopter Beneficiary is a prevailing party. The procedures set out in Exhibit A shall govern all Adopter Beneficiary Claims.

## 12. MISCELLANEOUS.

12.1 Ownership. All Proprietary Information and media containing Proprietary Information as provided by Licensor or its designee to Content Participant hereunder shall remain the property of Licensor, the Founders or their suppliers. Except as expressly provided herein, this Agreement does not give Content Participant any license or other right to the Proprietary Information.

12.2 Entire Agreement. This Agreement, including the Confidentiality Agreement and other exhibits hereto constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all oral, written or other agreements, either entered prior to or contemporaneously with this Agreement. This Agreement may not be modified except by written agreement of both Parties.

12.3 Assignment. The rights and licenses granted hereunder are personal to Content Participant, and Content Participant may not assign or transfer this Agreement, or any of its rights or obligations hereunder, except (a) with the written approval of Licensor (which shall not unreasonably be withheld), (b) to a corporation

controlling, controlled by or under common control with Content Participant or (c) to the purchaser of all or substantially all of the outstanding capital stock or assets and obligations of Content Participant or to the surviving entity in a merger, reorganization, or other business combination involving Content Participant where the surviving or acquiring company agrees in writing to be bound by this Agreement, provided that Content Participant shall use its good faith efforts to provide notice to Licensor of such assignment no later than thirty (30) days after such merger, reorganization or business combination. Subject to the limitations set forth in this Agreement, this Agreement will inure to the benefit of, and be binding upon, the Parties, their successors and permitted assigns. Licensor may assign or transfer this Agreement to any person or entity that agrees to assume Licensor's obligations hereunder, and Licensor shall provide Content Participant with notice thereof.

12.4 Presumptions. In construing the terms of this Agreement, no presumption shall operate in either Party's favor as a result of its counsel's role in drafting the terms or provisions hereof.

12.5 Governing Law; Jurisdiction. THIS AGREEMENT, AND ALL ADOPTER BENEFICIARY CLAIMS, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY IN SUCH STATE, AND WITH THE LAWS OF THE UNITED STATES AS WOULD BE CONSTRUED BY A FEDERAL COURT SITTING IN THE SOUTHERN DISTRICT OF NEW YORK;

12.5.1 IN CONNECTION WITH ANY LITIGATION BETWEEN THE PARTIES HERETO ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY ADOPTER BENEFICIARY CLAIM, EACH PARTY HERETO IRREVOCABLY CONSENTS TO: (i) THE EXCLUSIVE JURISDICTION AND VENUE IN THE FEDERAL AND STATE COURTS LOCATED IN THE COUNTY OF NEW YORK IN THE STATE OF NEW YORK AND IN LOS ANGELES COUNTY IN THE STATE OF CALIFORNIA; AND (ii) THE SERVICE OF PROCESS OF SAID COURTS IN ANY MATTER RELATING TO THIS AGREEMENT BY PERSONAL DELIVERY OR BY MAILING OF PROCESS BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, AT THE ADDRESSES SPECIFIED IN THIS AGREEMENT, OR TO THE AGENT TO BE APPOINTED PURSUANT TO SECTION 12.5.2.

12.5.2 EACH PARTY SHALL APPOINT AN AGENT IN THE STATES OF NEW YORK AND CALIFORNIA FOR ACCEPTANCE OF SERVICE OF PROCESS PROVIDED FOR UNDER THIS AGREEMENT AND SHALL NOTIFY THE OTHER PARTY OF THE IDENTITY AND ADDRESS OF SUCH AGENT WITHIN THIRTY (30) DAYS AFTER THE EFFECTIVE DATE.

12.5.3 EACH PARTY WAIVES ANY OBJECTION TO THE JURISDICTION, PROCESS, AND VENUE OF ANY SUCH COURT, AND TO THE EFFECTIVENESS, EXECUTION, AND ENFORCEMENT OF ANY ORDER OR JUDGMENT (INCLUDING BUT NOT LIMITED TO A DEFAULT JUDGMENT) OF SUCH COURT PERTAINING TO THIS AGREEMENT OR ANY ADOPTER BENEFICIARY CLAIM, TO THE MAXIMUM EXTENT PERMITTED BY THE LAW OF THE PLACE WHERE ENFORCEMENT OR EXECUTION OF ANY SUCH ORDER OR JUDGMENT MAY BE SOUGHT AND BY THE LAW OF ANY PLACE WHOSE LAW MIGHT BE CLAIMED TO BE APPLICABLE REGARDING THE EFFECTIVENESS, ENFORCEMENT, OR EXECUTION OF SUCH ORDER OR JUDGMENT, INCLUDING PLACES OUTSIDE OF THE STATE OF NEW YORK, THE STATE OF CALIFORNIA AND THE UNITED STATES.

12.6 Records Maintenance. Content Participant and Licensor shall maintain accurate records of its activities under this Agreement, including but not limited to records relating to its distribution of Revocation Information for at least three (3) years from the date of the act recorded.

12.7 Notice. All notices to be provided pursuant to this Agreement shall be given in writing and shall be effective when either served by personal delivery or upon receipt via certified mail, return receipt requested, postage prepaid, overnight courier service or sent by facsimile transmission with hard copy confirmation sent by certified mail, in each case to the Party at the addresses set out on the signature pages hereof.

12.8 Severability; Waiver. Should any part of this Agreement judicially be declared to be invalid, unenforceable, or void, the Parties agree that the part or parts of this Agreement so held to be invalid, unenforceable, or void shall be reformed by the entity having jurisdiction thereof without further action by the Parties hereto and only to the extent necessary to make such part or parts valid and enforceable. A waiver by either of the Parties hereto of any of the covenants to be performed by the other Party or any breach thereof shall not be effective unless made in writing and signed by the waiving Party and shall not be construed to be a waiver of any succeeding breach thereof or of any covenant herein contained.

12.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. The Parties acknowledge and agree that such counterparts may be executed by signatures sent by facsimile transmissions.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

**Digital Transmission Licensing  
Administrator, LLC:**

**Content Participant:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Addresses for notices

**Digital Transmission Licensing  
Administrator, LLC:**

**Content Participant:**

c/o License Management International, LLC.

\_\_\_\_\_

225B Cochrane Circle

\_\_\_\_\_

Morgan Hill, CA 95037

\_\_\_\_\_



## EXHIBIT A

### PROCEDURES FOR THIRD-PARTY BENEFICIARY CLAIMS

1. Prior to initiating or instituting any AV Content Participant Beneficiary Claim or Adopter Beneficiary Claim (each, a “Beneficiary Claim”) against an Adopter or against a Fellow AV Content Participant, as the case may be (each, a “Defendant”), an AV Content Participant Beneficiary or Adopter Beneficiary (each, a “Third-Party Beneficiary”) shall provide Licensor notice and consultation reasonable under the circumstances regarding a proposed Beneficiary Claim; provided that such consultation with Licensor shall not affect such Third-Party Beneficiary’s complete discretion in initiating or instituting such a Beneficiary Claim. Such Third-Party Beneficiary shall further provide Licensor with notice of actual filing of a Beneficiary Claim and, upon Licensor’s request, any copies of material documents filed in such Third-Party Beneficiary’s initiation, institution or pursuit of such Beneficiary Claim. Licensor shall cooperate reasonably with such Third-Party Beneficiary in providing appropriate and necessary information in connection with the Beneficiary Claim to the extent that such cooperation is consistent with the preservation of the integrity and security of DTCP and to the extent such cooperation does not involve release of information provided to Licensor by an Adopter or Fellow AV Content Participant that such Adopter or Fellow AV Content Participant has designated to Licensor to be its confidential and proprietary information. Documents provided to Licensor under the procedures set out in this Exhibit A shall not include any documents filed or to be filed under seal in connection with such Beneficiary Claim.

2. Licensor shall provide all Adopters (in the case of an Adopter Beneficiary Claim) and all Fellow AV Content Participants (in the case of an AV Content Participant Beneficiary Claim) with prompt notice of Licensor’s receipt of any notice of a Beneficiary Claim against a Defendant (a “Claim Notice”). Within thirty (30) days of the date of mailing of a Claim Notice, all Adopter Beneficiaries (in the case of an Adopter Beneficiary Claim), or all AV Content Participant Beneficiaries (in the case of an AV Content Participant Beneficiary Claim), shall elect whether to join such Beneficiary Claim, and the failure of any Adopter or Fellow AV Content Participant to provide written notice to Licensor of such election and to move to join such Beneficiary Claim within such thirty (30)-day period shall be deemed a waiver of such Adopter’s or Fellow AV Content Participant’s third-party-beneficiary right under its respective Adopter Agreement or AV Content Participant Agreement, as the case may be, with respect to all Beneficiary Claims against Defendant arising out of the alleged breach by Defendant raised in such Beneficiary Claim asserted by the Third-Party Beneficiary. The Third-Party Beneficiary instituting or initiating a Beneficiary Claim shall support, and Defendant shall not object to, any motion to so join by such Third-Party Beneficiaries electing to join such Beneficiary Claim within such thirty (30)-day period. Any judgment entered upon such Beneficiary

Claim shall be binding on all Adopters and Fellow AV Content Participants that failed to join such Beneficiary Claim as if they had joined such Beneficiary Claim. Neither any Adopter's or Fellow AV Content Participant's failure to notify or consult with Licensor or to provide copies, nor Licensor's failure to give notice to any Adopter or Fellow AV Content Participant pursuant to these third-party beneficiary procedures, under paragraphs 1 or 2 shall be a defense against any Beneficiary Claim or grounds for a request to delay the granting of any preliminary relief requested.

3. Third-Party Beneficiaries shall have no right to, and Content Participant agrees that it will not, enter into any settlement that: (i) amends any material term of any Adopter Agreement or AV Content Participant Agreement; (ii) has an adverse effect on the integrity or security of DTCP, or the operation of DTCP with respect to protecting Commercial Audiovisual Content from any unauthorized output, transmission, interception or copying, or the rights of Content Participants with respect to DTCP; or (iii) affects any of Licensor's or the Founders' rights in and to DTCP or any intellectual property right embodied therein, unless Licensor shall have provided prior written consent thereto.

EXHIBIT B  
ANNUAL FEES

US\$18,000

## EXHIBIT C

### CONFIDENTIALITY AGREEMENT

#### 1 Confidentiality

1.1 Permitted Use. Content Participant shall use Proprietary Information and Confidential Information (and tangible embodiments of either of the foregoing) solely as may be necessary for the activities contemplated under the Agreement, and shall not use any mentally-retained recollections thereof to circumvent or copy the methods disclosed in the Specification or any Proprietary Information or Confidential Information or to circumvent any obligations under the Agreement.

#### 2 Disclosure

2.1 Confidential Information. Content Participant may disclose Confidential Information only to (i) regular employees of Content Participant and individuals retained as independent contractors subject to confidentiality obligations equivalent to those applicable to regular employees of Content Participant who have a reasonable need to know and are bound in writing by obligations of confidentiality sufficient to protect the Confidential Information in accordance with the terms of the Agreement; (ii) Fellow Content Participants, provided that Content Participant may disclose to such Fellow Content Participants only information that such Fellow Content Participants are permitted to receive under their respective Content Participant Agreements or (iii) Content Participant's attorneys, auditors or other agents who owe Content Participant a duty of confidentiality and are bound to maintain such information in confidence as a result of a fiduciary relationship. Content Participant shall use the same degree of care, but no less than a reasonable degree of care, to avoid unauthorized disclosure or use of Confidential Information as Content Participant employs with respect to its comparably important confidential information. Notwithstanding the foregoing, Content Participant and Licensor may disclose Content Participant's status (or lack of it) as a licensee under the Agreement, and such disclosure shall not constitute Confidential Information. .

2.2 Contact Person. Content Participant shall designate a single employee and an alternate employee who shall receive all Confidential Information disclosed by Licensor.

2.3 Notification of Unauthorized Use or Disclosure. Content Participant shall notify Licensor immediately upon discovery of any unauthorized use or disclosure of Proprietary Information, and will cooperate with Licensor in every reasonable way to regain possession of Proprietary Information and prevent its further unauthorized use or disclosure.

2.4 Disclosure Required by Law. If Content Participant is required by law, regulation or order of a court or other authority of competent jurisdiction to disclose Confidential Information, Content Participant shall notify Licensor as promptly as possible, and shall, upon Licensor's request, reasonably cooperate in challenging or restricting the scope of such required disclosure.

2.5 Confidentiality Exceptions. The confidentiality restrictions contained in this Confidentiality Agreement shall not apply to Confidential Information that Content Participant can demonstrate: (i) is or becomes or has become generally known to the public through no breach of Content Participant's obligations owed to Licensor or the Founders and which Licensor failed to remove from public availability or to enjoin such public disclosure within 120 days after the date such information is or becomes generally known as set forth above; or (ii) is or has been developed by Content Participant's employees (whether independently or jointly with others) without having access (whether directly or through any intermediaries) to any such Confidential Information (or any translation, derivation or abstractions of Confidential Information) and without any breach of Content Participant's obligations to Licensor or the Founders; or (iii) is or has been disclosed to Content Participant by a third party which had developed (whether independently or jointly with others) or obtained such information without any access (whether directly or through any intermediaries) to any Confidential Information and without any breach of any such third party's obligations to Licensor or the Founders.

### 3 Period

3.1 Confidentiality Period. The confidentiality obligations set forth herein shall continue until the later of (i) three (3) years after the last commercial use of the Specification or DTCP by Licensor or any entity licensed to use the technology described in the Specification; and (ii) the expiration of the last copyright that protects any Commercial Entertainment Content which then exists in any country adhering to the Agreement on Trade Related Aspects of Intellectual Property Rights of the World Trade Organization dated April 15, 1994.

### 4 Other Terms

4.1 Reverse Engineering. Content Participant shall under no circumstances reverse engineer, decompile, disassemble or otherwise determine the operation of the Specification. Nothing herein shall be construed as an inducement for Content Participant to reverse engineer any products or components in which the Specification is implemented.

## EXHIBIT D

### INTELLECTUAL PROPERTY CLAIMS

(a) Hitachi, Ltd. (“Hitachi”) represents that as of November 4, 2003, the General Manager, U.S./European IP Licensing Department, Intellectual Property Group has not received any written notice or claims, threatened or pending, from a third party that the use of DTCP in accordance with the terms of this Agreement infringes any third party’s patent rights or that the licensing by Hitachi of any patent claims that would otherwise be “Necessary Claims” but for the fact that the licensing of such claims requires the payment of royalties to unaffiliated parties would require the payment of such royalties.

(b) Intel Corporation (“Intel”) represents that as of November 4, 2003, Intel’s Director of Litigation has not received any written notice or claims, threatened or pending, from a third party that the use of DTCP in accordance with the terms of this Agreement infringes any third party’s patent rights or that the licensing of or that the licensing by Intel of any patent claims that would otherwise be “Necessary Claims” but for the fact that the licensing of such claims requires the payment of royalties to unaffiliated parties would require the payment of such royalties.

(c) Matsushita Electric Industrial Co., Ltd. (“MEI”) represents that as of November 4, 2003, MEI’s Director, Legal Affairs Center, Intellectual Property Rights Operations Company has not received any written notice or claims, threatened or pending, from a third party that the use of DTCP in accordance with the terms of this Agreement infringes any third party’s patent rights or that the licensing by MEI of any patent claims that would otherwise be “Necessary Claims” but for the fact that the licensing of such claims requires the payment of royalties to unaffiliated parties would require the payment of such royalties.

(d) Sony Corporation (“Sony”) represents that as of November 4, 2003, Sony’s Deputy General Manager, Corporate Intellectual Property Department has not received any written notice or claims, threatened or pending, from a third party that the use of DTCP in accordance with the terms of this Agreement infringes any third party’s patent rights or that the licensing by Sony of any patent claims that would otherwise be “Necessary Claims” but for the fact that the licensing of such claims requires the payment of royalties to unaffiliated parties would require the payment of such royalties.

(e) Toshiba Corporation (“Toshiba”) represents that as of November 4, 2003, Toshiba’s General Manager, Intellectual Property Division, Digital Media Network Company, has not received any written notice or claims,

threatened or pending, from a third party that the use of DTCP in accordance with the terms of this Agreement infringes any third party's patent rights or that the licensing by Toshiba of any patent claims that would otherwise be "Necessary Claims" but for the fact that the licensing of such claims requires the payment of royalties to unaffiliated parties would require the payment of such royalties.

(f) The Parties and each of the Founders agree that in the event that a court of competent jurisdiction renders a final, non-appealable, judgment against any of the Founders for breach of the representations set forth in this Exhibit D, the liability of such Founder to Content Participant in connection with such breach shall in no event exceed the fees paid by Content Participant to Licensor under this Agreement in the immediately preceding two (2)-year period.

IN WITNESS WHEREOF, the Founders have executed this Exhibit as of the respective dates specified below.

**Hitachi, Ltd.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Intel Corporation**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Matsushita Electric Industrial Co., Ltd.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Sony Corporation**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Toshiba Corporation**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



EXHIBIT E

FORM ADOPTER AGREEMENT

EXHIBIT F

FORM OF  
CONFIDENTIALITY AGREEMENT  
FOR HIGHLY CONFIDENTIAL INFORMATION

This Confidentiality Agreement For Highly Confidential Information (the “HCI Confidentiality Agreement”) is effective as of \_\_\_\_\_ by and between: Digital Transmission Licensing Administrator, LLC, a Delaware limited liability company (“Licensor”); and \_\_\_\_\_ (together with its Affiliates, “Content Participant”):

W I T N E S S E T H:

WHEREAS, Content Participant and Licensor have entered into that certain Content Participant Agreement (the “CPA”), effective as of July 9, 2001;

WHEREAS, Content Participant wishes to obtain, pursuant to Section 3.7 of the CPA, Highly Confidential Information, as such term is defined in the CPA;

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements set forth herein and in the CPA, the parties hereto hereby agree as follows:

1. General

Capitalized terms used in this HCI Confidentiality Agreement and not otherwise defined herein shall have the meanings given in the CPA. This HCI Confidentiality Agreement shall be deemed an addendum to, and is hereby incorporated into, the CPA. Without limiting the foregoing, this HCI Confidentiality Agreement in no way limits Content Participant’s obligations under the Confidentiality Agreement (Exhibit C to the CPA).

2. Permitted Use

Content Participant shall use Highly Confidential Information (and tangible embodiments thereof) solely as may be necessary for Content Participant’s review thereof pursuant to Section 3.7 of the CPA, and shall not use any mentally-retained recollections thereof to circumvent or copy the methods disclosed in the Specification or any Proprietary Information, Highly Confidential Information or other Confidential Information or to circumvent any obligations under the CPA.

### 3. Confidentiality

3.1 Highly Confidential Information. Content Participant shall maintain the confidentiality of Highly Confidential Information in the following manner:

3.1.1 Content Participant shall employ procedures for safeguarding Highly Confidential Information at least as rigorous as Content Participant would employ for its own most highly confidential information, such procedures to include, at a minimum: (i) maintaining on Content Participant's premises a secure location in which any and all Highly Confidential Information shall be stored; (ii) such secure location shall be accessible only by authorized employees; (iii) employees shall sign in and out each time such employees visit such secure location; and (iv) when Highly Confidential Information is not in use, such information shall be stored in a locked safe at such secure location.

3.1.2 Content Participant may disseminate Highly Confidential Information only to the strictest minimum possible number of regular employees of Content Participant: (i) who have an absolute need to know such Highly Confidential Information in order to effectively carry out Content Participant's review thereof pursuant to Section 3.7 of the CPA; and (ii) who are bound in writing by obligations of confidentiality sufficient to protect the Highly Confidential Information in accordance with the terms of this HCI Confidentiality Agreement.

3.1.3 Content Participant shall not make any copies of any Highly Confidential Information. Content Participant may request additional copies of such information. Licensor may in its sole discretion fulfill any such request.

### 4. General

4.1 Improper or Unauthorized Acts. Content Participant shall make all reasonable efforts to assist Licensor in relation to any claim, action, suit, proceeding, or litigation with respect to any improper or unauthorized acts of any of its former employees.

4.2 Contact Person and Provision of DTCP Information. Content Participant shall designate a single employee and an alternate employee who shall receive all Highly Confidential Information disclosed by Licensor.

4.3 Notification of Unauthorized Use or Disclosure. Content Participant shall notify Licensor immediately upon discovery of any unauthorized use or disclosure of Highly Confidential Information, and will cooperate with Licensor in every reasonable way to regain possession of Highly Confidential Information and prevent its further unauthorized use or disclosure.

4.4 Disclosure Required by Law. If Content Participant is required by law, regulation or order of a court or other authority of competent jurisdiction to disclose Highly Confidential Information, Content Participant shall notify Licensor as promptly as possible, and shall, upon Licensor's request, reasonably cooperate in challenging or restricting the scope of such required disclosure.

4.5 Confidentiality Exceptions. The confidentiality restrictions contained in this HCI Confidentiality Agreement shall not apply to information that Content Participant can demonstrate: (i) is Highly Confidential Information which is or becomes or has become generally known to the public through no breach of Content Participant's obligations owed to Licensor or the Founders and which Licensor failed to remove from public availability or to enjoin such public disclosure within 120 days after the date such information is or becomes generally known as set forth above; (ii) is or has been developed by Content Participant's employees (whether independently or jointly with others) without having access (whether directly or through any intermediaries) to any Highly Confidential Information or other Confidential Information (or any translation, derivation or abstractions of Highly Confidential Information) and without any breach of Content Participant's obligations to Licensor or the Founders; or (iii) is or has been disclosed to Content Participant by a third party which had developed (whether independently or jointly with others) or obtained such information without any access (whether directly or through any intermediaries) to any Highly Confidential Information or other Confidential Information and without any breach of any such third party's obligations to Licensor or the Founders.

## 5. Liquidated Damages

The parties agree that it would be impossible to estimate the amount of damages in the event of certain breaches. In the event of a material breach by Content Participant of this HCI Confidentiality Agreement, Content Participant shall be liable for one million dollars (US\$1,000,000). For purposes of this Section 5, a series of substantially related events shall constitute a single material breach. A breach shall be "material" only if it has resulted in or would be likely to result in commercially significant harm to other users of DTCP, including but not limited to Adopters and Fellow Content Participants, or constitute a threat to the integrity or security of DTCP. In addition, the following is a non-exclusive list of circumstances in which, standing alone, there is no material breach of the applicable provisions: (i) if no Highly Confidential Information was released to a third party not permitted hereunder to have such information or could reasonably have been expected to have been released to such third party as a result of the breach; (ii) if Content Participant maintains an internal program to assure compliance herewith (including a program to assure maintenance of inventory, samples, and confidentiality of information for purposes in addition to compliance with this HCI Confidentiality Agreement), the breach was inadvertent or otherwise unintentional, and the breach did not have a material adverse effect on the integrity or

security of DTCP or the function of DTCP to protect Commercial Entertainment Content; or (iii) if Content Participant brought the breach to Licensor's attention in a timely manner as required by this HCI Confidentiality Agreement and such breach did not have a material adverse effect on the integrity or security of DTCP or the function of DTCP to protect Commercial Entertainment Content.

6. Period

The confidentiality obligations set forth herein shall continue until the later of (i) three (3) years after the last commercial use of the Specification or DTCP by Licensor or any entity licensed to use the technology described in the Specification; and (ii) the expiration of the last copyright that protects any Commercial Entertainment Content which then exists in any country adhering to the Agreement on Trade Related Aspects of Intellectual Property Rights of the World Trade Organization dated April 15, 1994.

7. Reverse Engineering

Pursuant to Section 4.1 of the CPA, Content Participant shall under no circumstances reverse engineer, decompile, disassemble or otherwise determine the operation of the Specification, including, without limitation, any encryption/decryption or scrambling/descrambling algorithm or logic of DTCP.

IN WITNESS WHEREOF, the parties have executed this HCI  
Confidentiality Agreement as of the date first above written.

**Digital Transmission Licensing      Content Participant:**  
**Administrator, LLC:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Addresses for notices

**Digital Transmission Licensing      Content Participant:**  
**Administrator, LLC:**

c/o License Management International, LLC.

225B Cochrane Circle

Morgan Hill, CA 95037

**EXHIBIT H**  
**EPN ADDENDUM TO CONTENT PARTICIPANT AGREEMENT**

Pursuant to the Content Participant Agreement executed on \_\_\_\_\_, 200\_ (the “Agreement”), between Licensor and Content Participant (each, a “Party” and, together, the “Parties”), this Addendum to the Agreement (the “Addendum”) sets forth the Parties’ respective rights and obligations with respect to the use of EPN Encoding (defined below) in connection with Other EPN Eligible Broadcast Television.

1. Definitions.

1.1 Where a capitalized term is used but not otherwise defined in this Exhibit H, the meaning ascribed thereto elsewhere in the Agreement shall apply.

1.2 “Effective Date” shall mean the date of execution of an EPN Addendum by a third EPN Eligible Content Participant.

1.3 “Effective Addendum Date” shall mean the second anniversary of the date upon which at least three EPN Eligible Content Participants have executed EPN Addenda that continuously have been maintained in effect over that two (2)-year period.

1.4 “EPN Addendum” means this Addendum and any other “EPN Addendum” included as an exhibit to any other AV Content Participant Agreement.

1.5 “EPN Content Participant” shall mean Content Participant upon and after Content Participant’s execution of this Addendum.

1.6 “Fellow EPN Content Participant” shall mean EPN Content Participant and any other Fellow AV Content Participant that executes an EPN Addendum.

1.7 “EPN Encoding” shall mean encoding in accordance with the requirements set forth in Section 3(a)-(e) of this Addendum.

1.8 “EPN Eligible Content Participant” shall mean, during the course of any one (1) calendar year, any Fellow AV Content Participant that is (a) a Major AV Content Participant and/or (b) a major United States broadcast television network (i.e., ABC, CBS, Fox, NBC, PBS and WB).

1.9 “Other EPN Eligible Broadcast Television” shall mean the delivery or transmission of any service, Program, or schedule or group of Programs, that (a) is delivered or transmitted via a Commercially-Adopted Access Control Method and (b) does not fall within the definition of “Conditional Access Delivery” or “BF Eligible Broadcast Television.”

2. License Fees for EPN. Upon the Effective Date, EPN Content Participant shall be required to pay a supplemental administration fee (which fee shall be included in the Administration Fee) in the amount of \$250,000 on each of the next three (3) successive anniversaries of the Effective Date and \$125,000 on each of the next following three (3) anniversaries of the Effective Date. At the end of such six (6)-year period, Licensor will consider whether continuation, reduction or elimination of such supplemental administration fee is warranted based on such factors as continuing consumer complaints, and any costs and obligations incurred by Licensor, Adopters and retailers that arise from their support of EPN.

3. Encoding Rules for EPN. Following the Effective Addendum Date, and subject to the terms and conditions of the Agreement including this Addendum, EPN Content Participant only may encode, or direct to be encoded, using EPN, Other EPN Eligible Broadcast Television in accordance with this Section 3:

(a) EMI shall be set to Mode B encryption in accordance with Chapter 6 of the Specification.

(b) EPN shall be set to be asserted in accordance with Chapter 6 and Appendix B of the Specification.

(c) EmCCI shall be encoded as “Copy Freely” in accordance with the Specification.

(d) CGMS-A, if present, shall be encoded as “Copy Freely” in accordance with the CGMS-A specifications contained in IEC 61880 (for inclusion on Line 20) or in CEA-608-B (for inclusion on Line 21) or in CEA-805-A (for inclusion on Line 41), as applicable.

(e) APS trigger bits, if present, shall be encoded so as not to trigger the application of the Automatic Gain Control and Colorstripe copy control system, in accordance with the document entitled “Specification of the Macrovision Copy Protection Process for DVD Products, Revision 7.1.D1, September 30, 1999.”

4. Reciprocal Nonassertion Covenant. For avoidance of doubt, EPN Encoding is part of the Interface; and the covenants granted under Section 2.2 of the Agreement and any comparable provision of any AV Content Participant Agreement and under Section



5.3 of the Form Adopter Agreement and any comparable provision of any Adopter Agreement apply to EPN Encoding.

5. Claims Asserting Rights to EPN.

5.1 If a third party asserts against Licensor, any Founder, any Fellow EPN Content Participant or any Adopter, or any of its or their Affiliates (each, an “Alleged Infringer”) any claim that its intellectual property right is infringed or misappropriated by EPN Encoding in connection with Other EPN Eligible Broadcast Television (an “EPN Claim”), then:

(a) EPN Content Participant, on its own or with other Fellow EPN Content Participants, shall promptly and in good faith, after receiving notice from any Alleged Infringer of an EPN Claim, endeavor to negotiate a license with such third party enabling the continued licensing and use of EPN Encoding in connection with Other EPN Eligible Broadcast Television by Fellow EPN Content Participants and Adopters and shall pay any and all applicable license or other fees for such past and continued licensing by Licensor or use of EPN Encoding in connection with Other EPN Eligible Broadcast Television by any Alleged Infringer and any Adopter. Licensor will provide reasonable cooperation to EPN Content Participant, and any other Fellow EPN Content Participants, with respect to such negotiations.

(b) Notwithstanding any other terms or condition of the Agreement, if EPN Content Participant and other Fellow EPN Content Participants are unwilling or unable to negotiate the license described in Section 5.1(a), Licensor, on its own initiative, can, or, at the request of EPN Content Participant and such other Fellow EPN Content Participants, shall, (i) delete EPN from the Specification without utilizing the procedures set forth in Section 3.7 of the Agreement and/or (ii) terminate all EPN Addenda then in effect.

(c) EPN Content Participant is jointly and severally responsible with each other Fellow EPN Content Participant (each, an “Indemnifying Party”) for indemnifying and holding harmless Licensor, the Founders, Adopters and each of its or their Affiliates (each, an “Indemnified Party”), and, at the Indemnified Party’s election, defending the Indemnified Party, from and against any and all losses, deficiencies, damages, liabilities, costs and expenses (including reasonable attorneys’ fees and expenses), claims, suits and actions with respect to any EPN Claim (“Costs or Actions”). In the event that any Indemnified Party elects to have an Indemnifying Party defend it, (i) the Indemnified Party will so

notify the Indemnifying Party in writing; (ii) the Indemnified Party shall have the right to approve the Indemnifying Party's counsel, which approval shall not unreasonably be withheld, and to obtain its own counsel at the Indemnified Party's own expense; and (iii) the Indemnifying Party shall obtain the approval of the Indemnified Party before entering into any settlement or compromise that would impose any liability or obligation on the Indemnified Party, which approval shall not be unreasonably withheld. If any Cost or Action is asserted against the Indemnified Party in respect of which the Indemnified Party proposes to demand indemnification from the Indemnifying Party pursuant to this Section 5.1(c), the Indemnified Party will promptly notify the Indemnifying Party in writing. No failure of the Indemnified Party to so notify the Indemnifying Party shall relieve the Indemnifying Party from the obligation to indemnify the Indemnified Party unless and to the extent the Indemnifying Party is actually prejudiced by such failure. In the event that an Indemnified Party elects to defend itself, EPN Content Participant, and each other Fellow EPN Content Participant, shall have the right to participate in the defense and to approve any settlement or compromise that would impose any liability or obligation on EPN Content Participant or such other Fellow EPN Content Participants, which approval shall not be unreasonably withheld. Licensor and the Founders and EPN Content Participant agree to cooperate with each other in connection with the defense of any EPN Claim.

5.2 Licensor hereby represents that, in selecting the settings for EPN Encoding, it has used no less than the same degree of care that it has used in selecting the settings for the encoding of comparable protection capabilities provided under the Specification.

## 6. Cooperation and Public Relations.

6.1 Licensor and EPN Content Participant agree to cooperate in good faith so as to create and participate in an appropriate public relations campaign, including relations with other Fellow EPN Content Participants, service providers, source device manufacturers and any other parties affected by the implementation of EPN Encoding in connection with Other EPN Eligible Broadcast Television. The purpose of such campaign is to explain the reasons behind the adoption of EPN in the Specification in connection with Other EPN Eligible Broadcast Television, and to demonstrate the support of EPN Content Participant and other Fellow EPN Content Participants for the application of EPN Encoding to Other EPN Eligible Broadcast Television. EPN Content Participant and Licensor each agree that it will not issue any press release or make any public announcement concerning its execution of this Addendum or its use of EPN

Encoding in connection with Other EPN Eligible Broadcast Television without prior disclosure to and written consent from the other Party.

6.2 EPN Content Participant agrees that it, with other Fellow EPN Content Participants, will fully fund the upgrade or replacement of devices that are subject to specific consumer complaints actually lodged with manufacturers or retailers of products, or distributors of content, because the consumers are no longer capable of making multiple generation copies using equipment manufactured prior to the Effective Addendum Date. Licensor agrees that it will encourage affected Adopters to work with such Fellow EPN Content Participants to minimize the cost of this obligation (e.g., by replacing boards or chips rather than by replacing devices). Licensor will not advertise or publicize the availability of this remedy to members of the general public, but consumers may be directed to contact a manufacturer or retailer so as to address their concerns. Licensor and EPN Content Participant will work together in good faith to establish the procedures and mechanisms by which Fellow EPN Content Participants will undertake their funding obligations pursuant to this Section. This obligation shall terminate three (3) years following the Effective Addendum Date.

7. Notice of Effective Addendum Date. Following the Effective Date, Licensor shall give notice to Fellow EPN Content Participants and to Adopters of the date upon which any changes to the Operative Protection Agreements required in order to implement EPN Encoding in connection with Other EPN Eligible Broadcast Television shall come into force.

8. Term and Termination.

8.1 Termination. This Addendum shall come into force upon execution by both Parties, and shall remain in effect until terminated in accordance with the terms of this Section 8.

8.2 Termination by EPN Content Participant. EPN Content Participant shall have the right to terminate this Addendum upon notice to Licensor at any time.

8.3 Termination by Licensor. Licensor shall have the right to terminate this Addendum upon notice to EPN Content Participant upon any of the following occurrences:

(a) a material breach by EPN Content Participant of this Addendum or Section 5.3 of the Agreement, which breach remains uncured after, or is not capable of cure within, thirty (30) days of Licensor providing notice of such breach to EPN Content Participant;

(b) deletion of EPN from the Specification pursuant to Section 5.1(b) of this Addendum or as otherwise permitted under Section 5.1(b)(ii); or

(c) after the Effective Addendum Date, if there are fewer than three (3) EPN Content Participants for any period exceeding twenty-four (24) months, provided that Licensor notifies Fellow EPN Content Participants of its intention to terminate at least six (6) month's prior to the effective date of termination.

8.4 Termination of Agreement. This Addendum shall terminate upon the termination of the Agreement in accordance with Section 8 thereof.

8.5 Effect of Termination. Immediately upon termination of this Addendum, EPN Content Participant shall cease, and shall direct others to cease, all use of EPN Encoding in connection with Other EPN Eligible Broadcast Television. In no event shall EPN Content Participant have any liability, after the termination of this Addendum, for any effects, after such termination, of EPN Content Participant having encoded, or directed to be encoded, using EPN, in accordance with the terms of this Addendum and Section 5 of the Agreement, Other EPN Eligible Broadcast Television prior to such termination.

8.6 No Refunds. No portion of any supplemental administration fees paid pursuant to this Addendum shall be refunded upon termination.

8.7 Survival. The terms of Sections 4 (with respect to the Founders and then-current Fellow AV Content Participants and Adopters), 5.1(c) (with respect to any EPN Claims asserted prior to termination), 6.2 (with respect to any consumer complaints lodged prior to termination) and this Section 8 shall survive any termination of this Addendum.

IN WITNESS WHEREOF, the Parties have executed this Addendum as of the date first above written.

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**Digital Transmission Licensing  
Administrator, LLC:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EPN Content Participant:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **DTLA IP Statement**

A purpose of the Digital Transmission Licensing Administrator, LLC (“DTLA”) is to promote broad market acceptance of the DTCP technology. In furtherance of this purpose, DTLA represents that DTLA will not bring suit, and each of the Founders represents that it will not bring suit, for infringement of any of its Necessary Claims against (i) any content owner that is not a Content Participant or Affiliate thereof (“Non-Participating Content Owner”), or (ii) any system operator or distributor of content that is not a Content Participant or Affiliate thereof (“Non-Participating System Operator”), for “encod[ing], or direct[ing] to be encoded, using DTCP” (as such phrase is defined in the Content Participant Agreement), if such Non-Participating Content Owner or Non-Participating System Operator, in encoding its content or directing its content to be encoded, using DTCP, encodes such content in a manner that complies with the principles regarding appropriate use of the DTCP technology embodied in Sections 5.1(a), (b), (d) and (e) of the Content Participant Agreement: Audiovisual Version as set out in Exhibit A to this DTLA IP Statement (hereinafter the “Encoding Rules”), provided that (a) such representation made by DTLA shall not extend to any entity that asserts, or whose Affiliate asserts, a claim of infringement under any Necessary Claim against DTLA or any licensee of DTLA; (b) such representation made by a Founder shall not extend to any entity that asserts, or whose Affiliate asserts, a claim of infringement under any patent claim against such Founder or any of its Affiliates and (c) such representation made by DTLA and the Founders does not extend to the use of (x) the Non-Assertion Bit (“NAB”) or Encryption Plus Non-Assertion (“EPN”) in Other EPN Eligible Broadcast Television or in other content delivered by means other than Conditional Access Delivery other than BF Eligible Broadcast Television, or (y) any other supplemental aspects of DTCP that DTLA may specifically identify on its website from time to time.

Non-Participating Content Owners and Non-Participating System Operators are hereby notified that DTLA may amend the Encoding Rules from time to time without consultation with or notice to any Non-Participating Content Owner or Non-Participating System Operator. DTLA will post such revised versions of the Encoding Rules on the DTLA website. Should any Non-Participating Content Owner or Non-Participating

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System Operator cause DTCP to be used in a manner that does not comply with the Encoding Rules attached hereto or as may be amended, then DTLA and Founders reserve the right to pursue any legal action and remedy it or they deem(s) necessary to protect its or their intellectual property following such Non-Participating Content Owner's and/or Non-Participating System Operator's failure to cure within thirty (30) days following notice, except that no notice shall be required and no opportunity to cure shall be available for any non-compliance with an amended version of the Encoding Rules if such non-compliance occurs more than one hundred twenty (120) days after the posting by DTLA to the DTLA website of such amended version of the Encoding Rules. The above representation is subject to the Non-Participating Content Owner's or Non-Participating System Operator's continued compliance with the Encoding Rules attached hereto or as may be amended. No other representations or waivers of rights are made or implied as part of this representation, and this statement does not constitute a license to use DTCP or a license under any Founder's or DTLA's intellectual property right, by implication, estoppel or otherwise. Except as otherwise provided in Exhibit A, capitalized terms used in this IP Statement and not otherwise defined herein shall have the meaning given in the Digital Transmission Protection License Agreement posted on the DTLA website.

ENCODING RULES

5.1 Encoding Rules.

(a) Content Participant shall not encode, or direct to be encoded, using DTCP, Commercial Audiovisual Content so as to prevent or limit copying thereof in Licensed Products except as follows:

(i) to prevent or limit copying of Prerecorded Media, Video on Demand, Pay-Per-View, Subscription-on-Demand, and Undefined Business Models that are Comparable to any of the foregoing; and

(ii) to prevent or limit copying, other than such first generation of copies as are permitted under the Compliance Rules, of Pay Television Transmissions, Non-Premium Subscription Television, Free Conditional Access Delivery, and Undefined Business Models that are Comparable to any of the foregoing.

(b) Content Participant shall not encode, or direct to be encoded, using DTCP, Commercial Audiovisual Content so as to prevent or limit the retransmission thereof except as follows:

(i) Content Participant may encode, or direct to be encoded, using DTCP, Commercial Audiovisual Content pursuant to Section 5.1(a); and

(ii) Content Participant may encode, or direct to be encoded, using EPN, any Defined Business Models other than Other EPN Eligible Broadcast Television, and any Undefined Business Models that are Comparable to such Defined Business Models, in each case in accordance with the terms of paragraphs (A)-(E) of this Section 5.1(b)(ii):

(A) EMI shall be set to Mode B encryption in accordance with Chapter 6 of the Specification.

(B) EPN shall be set to be asserted in accordance with Chapter 6 and Appendix B of the Specification.

(C) EmCCI shall be encoded as “Copy Freely” in accordance with the Specification.

(D) CGMS-A, if present, shall be encoded as “Copy Freely” in accordance with the CGMS-A specifications contained in IEC 61880 (for inclusion on Line 20) or in CEA-608-B (for inclusion on Line 21) or in CEA-805-A (for inclusion on Line 41), as applicable,



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(E) APS trigger bits, if present, shall be encoded so as not to trigger the application of the Automatic Gain Control and Colorstripe copy control system, in accordance with the document entitled “Specification of the Macrovision Copy Protection Process for DVD Products, Revision 7.1.D1, September 30, 1999.”

(d) Content Participant shall not encode, or direct to be encoded, using the Image Constraint Token, Commercial Audiovisual Content so as to prevent or limit any Sink Device from outputting such content in High Definition Analog Form or any unprotected digital equivalent thereof, except with respect to Prerecorded Media, Pay Television Transmissions, Video-on-Demand, Subscription-on-Demand, Pay-Per-View, an Undefined Business Model that is Comparable to any of the foregoing, or any other Conditional Access Delivery of a Program that had a theatrical release, or was released direct-to-video, and is transmitted or delivered uninterrupted by Commercial Advertising Messages. Notwithstanding the foregoing, Content Participant shall not so encode, or direct to be encoded, using the Image Constraint Token, any Commercial Audiovisual Content that Content Participant causes or permits to be transmitted or delivered to a device that incorporates a Source Function if Content Participant permits such Commercial Audiovisual Content to be substantially simultaneously output from such device in an unprotected High Definition Analog Form or any unprotected digital equivalent (unless (i) via a digital transmission technology which is licensed solely for transmission for display purposes (e.g., DVI) or (ii) via any computer video output referenced in Section 4.3.3 of Part 1 of Exhibit B to the Form Adopter Agreement during the time period in which Licensed Products incorporated into Computer Products are permitted under such section to pass to such output Decrypted DT Data other than as a Constrained Image via such output) and such content, when received by such device, is not DT Data. For purposes of this Section 5.1 to “encode, or direct to be encoded, using the Image Constraint Token” means to direct or cause the setting of the Image Constraint Token so as to cause a Sink Device that outputs Decrypted DT Data to a High Definition Analog Output or an unprotected digital equivalent thereof to so output such Decrypted DT Data as a Constrained Image. Capitalized terms used in this Section 5.1(d) and not otherwise defined in this IP Statement shall have the meaning given to such terms in the Compliance Rules to the Form Adopter Agreement.

(e) With respect to any Commercial Audiovisual Content delivered or transmitted in the form of Video-on-Demand, Pay-Per-View or Subscription-on-Demand, or an Undefined Business Model that is Comparable to any of the foregoing, in each case that Content Participant encodes or directs to be encoded, using DTCP, so as to prevent or limit a recipient authorized to receive such delivery or transmission from making a such first generation of copies as are permitted under the Compliance Rules, Content Participant shall encode, or direct to be encoded, such content so as to cause the Retention State Indicator associated with such content to be set so as to permit Sink Devices to retain such content for at least ninety (90) minutes. Notwithstanding the foregoing, if the amount of time that such content may be retained in any Source Device is determined pursuant to rules, standards or obligations that were developed under an open-standards process, Content Participant shall not encode, or direct to be encoded, such content so as to cause the Retention State Indicator associated with such content to

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be set so as to prevent a Sink Device from retaining such content for such period of time specified in the Specification that is closest to, but not exceeding, the period of time that such Source Device is permitted to retain such content.

## **Statement of DTLA Criteria for Reviewing Recording and Retransmission Protection Technologies**

The DTLA Policy Group and Technical Group will engage in a review process designed to determine whether, from technical, legal and policy perspectives, a proposed recording or retransmission protection technology will maintain integrity and robustness for DT Data, and to consider whether Content Participants, certain other content owners and Adopters are satisfied with the level of protection provided by the technology and licensing framework. This review process is intended to be conducted by the DTLA using objective criteria, rather than subjective judgments, which criteria are set forth below.

### **I. DTLA Review**

#### **A. Policy Review**

1. The proposed technology does not impair interoperability with respect to the exchange of DT Data among licensed products.

#### **B. Legal Review**

1. The license agreement implements requirements that are no less stringent than the requirements of Exhibit B Part 1: Compliance Rules for Sink Functions, as set forth in the most current version of the DTLA Adopter Agreement, including with respect to maintaining the protection of DT Data through authorized digital, analog and high definition analog outputs, and prohibiting unauthorized retransmission of DT Data over wide area networks and the Internet.

2. If the technology so permits, the license agreement provides for a right of revocation or for renewability where the security elements of a particular device have been cloned.

3. The license agreement provides protections against the device interfering with a consensus watermark, in a manner no less stringent than the obligations set forth in Section 6 of Exhibit B, Part 1: Compliance Rules for Sink Functions in the most current version of the DTLA Adopter Agreement.

4. The license agreement imposes robustness requirements that are no less stringent than the applicable Robustness Rules as set forth in the most current version of the DTLA Adopter Agreement.

5. Legal recourse potentially is available in case of circumvention of the technology by persons other than licensees.

6. The license provides, or the licensor commits, that future amendments to the license that would affect the license terms and conditions that were disclosed to DTLA will not diminish the protections afforded to DT Data, as described above.

### C. Technical Compliance

The proponent of the technology should provide to the DTLA sufficient technical information to demonstrate that:

1. The recording technology provides for detection and correct response to copy control information, as defined by the DTLA Specification (in EMI, Embedded CCI or both).
2. The recording technology provides for a means of security for the making of permissible copies, as set forth in Section 2 of Exhibit B, Part 1: Compliance Rules for Sink Functions of the most current version of the DTLA Adopter Agreement.
3. The recording technology provides that removable recorded media will maintain the required level of protection when played back on a device other than the device upon which the recording was made.

### II. Content Owner and Implementer Support

1. In addition to meeting the above criteria, the proponent may provide to DTLA evidence of support for the technology and licensing terms and conditions from Content Participants and DTCP Adopters. In addition, the proponent also may provide to DTLA evidence of support for the technology and licensing terms and conditions from:

- a. Motion picture companies that are members of the MPAA, in the case of technology used to protect audiovisual works,
- b. Major sound recording labels, in the case of technology used to protect only sound recordings, and
- c. Manufacturers interested in implementing both the proposed technology and DTCP.

2. In the event that the proposed technology and licensing terms and conditions do not meet one or more of the requirements set forth in subsections B and C of Section I above, the proponent should provide DTLA with evidence of support for the technology from a substantial number of major motion picture or recording companies, as applicable.